

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
BEFORE THE HONORABLE STACEY G. JERNIGAN, CHIEF JUDGE

In Re: ) Case No. 23-30690-sgj7  
ISMAIL ESSA BHAI, )  
Debtor. )  
\_\_\_\_\_  
BENEFIT STREET PARTNERS REALTY ) Adv. No. 23-03042-sgj  
OPERATING PARTNERSHIP, L.P., and )  
BSP of FINANCE, LLC, )  
Plaintiffs, ) PLAINTIFF'S MOTION  
v. ) for SUMMARY JUDGMENT  
ISMAIL ESSA BHAI, )  
Defendant. ) June 10, 2024  
\_\_\_\_\_  
) Dallas, Texas

Appearances:

For Plaintiff-Movant Adam D. Herring  
Benefit Street Lee B. Hart (via WebEx)  
Partners, L.P.: Nelson Mullins Riley & Scarborough, LLP  
201 17th Street, N.W., Suite 1700  
Atlanta, Georgia 30363

For the Debtor- Joyce W. Lindauer  
Defendant: Sydney Ollar  
Joyce W. Lindauer Attorney, PLLC  
1412 Main Street, Suite 500  
Dallas, Texas 75202

Digital Court United States Bankruptcy Court  
Reporter: Northern District of Texas  
Michael F. Edmond Sr., Judicial  
Support Specialist  
Earle Cabell Building, U.S. Courthouse  
1100 Commerce Street, Room 1254  
Dallas, Texas 75242

Certified Electronic Susan Palmer, CERT 00124  
Transcriber: Palmer Reporting Services

Proceedings recorded by digital recording;  
transcript produced by federally-approved transcription service.

*Plaintiff's Motion for Summary Judgment*

2

1 Monday, June 10, 2024

2 2:35 o'clock p.m.

2 P R O C E E D I N G S

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Good afternoon. Please be seated.

5 All right. We have a hearing on a motion for summary  
6 judgment in Benefit Street Partners versus Bhai, Adversary  
7 23-3042. We will get appearances first from the movants,  
8 please.

9 MR. HERRING: Good afternoon, Your Honor. Adam  
10 Herring on behalf of Benefit Street, the plaintiff in this  
11 action. On WebEx observing are Lee Hart, from my firm Nelson  
12 Mullins, and Mike Comparato (phonetic) from Benefit Street.

13 THE COURT: All right. Thank you.

14 Next.

15 MS. LINDAUER: Your Honor, Joyce Lindauer and Sydney  
16 Ollar here on behalf of Ismail Bhai, the debtor and also the  
17 defendant in this adversary proceeding.

18 THE COURT: Okay. Thank you.

19 MS. LINDAUER: Thank you.

20 THE COURT: All right. Mr. Herring, I got two giant  
21 notebooks up here. So I am ready to hear your argument.

22 MR. HERRING: Thank you, Your Honor. And apologies  
23 for the size of the notebooks.

24 THE COURT: It is what it is.

25 MR. HERRING: It is what it is.

*Plaintiff's Motion for Summary Judgment*

3

1           THE COURT: Right.

2           MR. HERRING: Thank you. Good afternoon, Your Honor.

3 Again, Adam Herring with Nelson Mullins on behalf of Benefit  
4 Street. We are here on Benefit Street's motion for summary  
5 judgment in this 523 and 727 dischargeability proceeding.

6           It's often repeated but true in this case and every  
7 other case that a bankruptcy discharge is intended to benefit  
8 only honest but unfortunate debtors. Here, the maxim again  
9 holds true. This debtor has been dishonest to Benefit Street,  
10 he's been dishonest to his other creditors, he's been dishonest  
11 in this litigation, and he's been dishonest to this Court. This  
12 conclusion is not just my client's or mine, it's born out by  
13 indisputable facts which we pled out in our brief, will discuss  
14 today, and more than 1500 pages of appendix materials.

15           It's born out by the debtor's disgraceful conduct of  
16 this case in this litigation, which has not only been infected  
17 by his and his family's dishonesty but outright contempt for the  
18 judicial process. And it's born out by the debtor's own  
19 deposition testimony, which, in the final assessment, is  
20 incomprehensible in its implausibility and inconsistency.

21           Simply put, Your Honor, in almost 15 years of practice  
22 in bankruptcy law exclusively, including representing individual  
23 debtors, including defending individual debtors in adversary  
24 proceedings, and including with working at the Executive Office  
25 for U.S. Trustees overseeing civil enforcement, I have

*Plaintiff's Motion for Summary Judgment*

4

1 personally never encountered a more disturbing case of fraud or  
2 a debtor less interested in participating honestly in the  
3 process.

4 This debtor is not honest. And if he's unfortunate,  
5 that misfortune is of his own making. The only just outcome  
6 here is denial of his discharge.

7 In a few minutes, Your Honor, I will walk somewhat  
8 painstakingly through the legal standards for summary judgment  
9 and their application to our claims for relief, along with the  
10 material factual support for each of those claims. But first  
11 I'd like to set the stage, you know, with the Court's indulgence  
12 for a few minutes.

13 The debtor Ismail Bhai is the patriarch of what can  
14 fairly be described as a close-knit family consisting of: The  
15 debtor; his former spouse Rozmeen Bhai; and his adult son  
16 Raheel, sometimes going by Ray Bhai. The three at all times  
17 relevant to this litigation and for years before and currently  
18 continuously live together in a house owned by the debtor at  
19 2216 Glacier Court in Carrollton. The three work together,  
20 owned numerous business interests together, they ate meals  
21 together, they attended religious services and events together,  
22 and they travel together. Ultimately, as we'll discuss, they  
23 defrauded Benefit Street together. Before that, likely other  
24 victims.

25 Turning to the Benefit Street loan that underlies all

*Plaintiff's Motion for Summary Judgment*

5

1 of this – this case. The Bhais including the debtor were  
2 involved in real estate investments prior to the events  
3 precipitating this litigation of Benefit Street's involvement.  
4 Along the way of that business, they picked up a portfolio of 24  
5 commercial properties across 10 states, each having a Walgreens  
6 store as an existing tenant.

7 In early 2022, through an entity – entity called IBF  
8 Properties, LLC, the debtor and his family approached Benefit  
9 Street to refinance the Walgreens portfolio. Benefit Street  
10 ultimately agreed to that loan. And on April 18th, 2022, they  
11 entered into – IBF and Benefit Street entered into a loan  
12 agreement. And IBF executed two promissory notes in the total  
13 amount of \$149,700,000, in favor of Benefit Street, and executed  
14 24 security instruments, one for each Walgreens store, in  
15 Benefit's favor.

16 The underlying documents for the loan, the loan  
17 agreement, is at page 121 of the Appendix. The promissory notes  
18 start at page 284 of the Appendix. And the secured instruments  
19 are discussed in Mr. Grimbley's (phonetic) affidavit at page  
20 1559 of the Appendix.

21 Raheel – I'm just going to go by first names for the  
22 Bhais, Your Honor, by the way, just for simplicity.

23 THE COURT: Okay.

24 MR. HERRING: Raheel executed the loan documents on  
25 behalf of IBF. That signature is at the Appendix at page 259.

*Plaintiff's Motion for Summary Judgment*

6

1 Nominally, IBF was almost entirely owned and managed by Raheel.  
2 That's in the Appendix at page 658. But this was merely a  
3 facade. As discussed above, the Bhais, including the debtor, as  
4 a unit controlled and owned all of the family businesses. The  
5 debtor, despite repeatedly disavowing, including in his  
6 depositions, any knowledge of the loan while it was being  
7 negotiated and closed, among other things, engaged in email  
8 correspondence, attempting to write insurance policies in his  
9 capacity as a Farmer's Insurance agent, on the collateral  
10 property's underlying loan.

11 And that – that email thread – I'm sorry. I can slow  
12 down if Your Honor wants to catch up to the Appendix that's –

13 THE COURT: Well, yeah. I do want to be able –

14 MR. HERRING: Yeah.

15 THE COURT: – to pinpoint the email thread on that.

16 MR. HERRING: Okay. The email thread is page 1452 to  
17 '59 of the Appendix, Your Honor.

18 THE COURT: Okay. 1452.

19 MR. HERRING: I'm sorry.

20 THE COURT: Okay. The – this is Harbor Insurance  
21 Advisory. That's from someone, Jasmine Drinkwater (phonetic)  
22 there, to Ray Bhai. And then the stamp marking is – it looks  
23 like it's just to Ray Bhai, but then...

24 MR. HERRING: Let me – I'm sorry, Your Honor. I'm  
25 turning there myself.

*Plaintiff's Motion for Summary Judgment*

7

1                   THE COURT: And there is a cc to Ismail on the bottom  
2 of 1453.

3                   Okay. I don't want to get too bogged down, but in –  
4 one of the things that's at the forefront of my mind is the loan  
5 agreement, the promissory notes were signed by Ray?

6                   MR. HERRING: Correct, Your Honor.

7                   THE COURT: And what is my material summary judgment  
8 evidence that's not in dispute that Ismail participated or, you  
9 know, made representations or participated in an actual fraud  
10 pertaining to that loan?

11                  MR. HERRING: Your Honor, our evidence of the fraud  
12 that we don't believe is in material dispute related – this is  
13 particularly for the 523 claim, in the participation in the  
14 loan, is this email correspondence, which I will pinpoint in a  
15 second Ismail's participation. And also we argue that Ismail's  
16 guaranty of the loan, which he made after the fraud was  
17 discovered, indicates his involvement.

18                  THE COURT: Okay. And –

19                  MR. HERRING: Sort of a logical –

20                  THE COURT: – separate transaction, but –

21                  MR. HERRING: Correct – correct, Your Honor.

22                  THE COURT: – I'm – the original transaction, I'm just  
23 zeroing in on at the moment.

24                  MR. HERRING: And, Your Honor, the Ismail's – excuse  
25 me – the debtor's participation in the email thread actively is

*Plaintiff's Motion for Summary Judgment*

8

1 at page 1457.

2 THE COURT: Okay.

3 MR. HERRING: Kind of starting at around the middle of  
4 the page.

5 THE COURT: So this is an email from Ismail to Nicole  
6 Napolitano (phonetic) at Benefit Street, working on what the  
7 policy would be, and stated: And you should have it Monday. So  
8 he's corresponding with someone at Benefit.

9 MR. HERRING: Correct, Your Honor.

10 THE COURT: And then on the next – the previous page,  
11 I guess – the next page has the previous email, April 5th.  
12 Ismail: I'm with the lender's team. We're trying to finalize  
13 the insurance. Okay.

14 MR. HERRING: Shall I continue, Your Honor?

15 THE COURT: Go ahead, uh-huh.

16 MR. HERRING: Okay. Yes. Thank you.

17 At closing of the loan, Your Honor, also on April  
18 18th, 2022, the loan proceeds were disbursed to pay off existing  
19 secured debt, as listing on the closing statement. And the  
20 closing statement for the loan is at page 1364 of the Appendix.

21 THE COURT: Okay.

22 MR. HERRING: And it's – it's a lengthy closing  
23 statement. And there were multiple payoff line items to each of  
24 these lenders. So, to total it all up and summarize it:  
25 \$112,533,891.35 in total was paid to Revere Capital at closing;

*Plaintiff's Motion for Summary Judgment*

9

1       \$11,709,023.59 was paid to AccessBank Texas at closing; and  
2       \$21,906,500 was paid to EPI Commercial Finance at closing.

3                  The problem, Your Honor, is that while Revere and  
4       AccessBank were real lenders, EPI was not. EPI was formed just  
5       days before the closing for the sole purpose of fraudulently  
6       receiving the proceeds of the loan. This is a fact that Raheel  
7       admitted in connection with his criminal prosecution in a plea  
8       arrangement, in a — excuse me — the factual résumé underlying  
9       his plea arrangement. That is in the Appendix at page 1304.

10                 EPI opened its bank account on April 8th, 2022, just  
11       10 days before closing of the Benefit Street loan, as evidenced  
12       by the account signature card. And I'm sorry to skip around,  
13       Your Honor. That's in the Appendix at 1114.

14                 THE COURT: Um-hum.

15                 MR. HERRING: On April 8th, 2022, the day it was  
16       opened, of course EPI's Bank of America account had a zero  
17       dollar balance. In the month of April, it received \$21,909,500  
18       in deposits. And the bank statement reflecting that deposit is  
19       at page 1368, consisting of a \$3,000 initial deposit on April  
20       11th, and then 20 — the \$21,906,500 — I'll just call it \$21  
21       million from now on — in loan proceeds on April 19th. That  
22       shows on page 1370 of the Appendix.

23                 That almost \$22 million deposit only stayed in EPI's  
24       account momentarily. On April 19th, the very same day it was  
25       put in the account, all but a thousand dollars were transferred

*Plaintiff's Motion for Summary Judgment*

10

1 out of EPI's account, as a funds tr- – listed on that page of  
2 the statement as a funds transfer debit. That \$22 million went  
3 directly to another Bank of America account, one owned by the  
4 debtor and his family. This statement is at page 1166.

5 On its face, that account was owned by the debtor,  
6 along with Raheel and Rozmeen, per both the account statements  
7 and the account signature card. The account signature card is  
8 in – at page 1101 of the Appendix.

9 Like the EPI account, this family account had a zero  
10 dollar balance at the beginning of the April statement month.

11 Continuing to follow that \$22 million, the debtor and  
12 his family began to dissipate it almost as soon as they skimmed  
13 it from the loan. The April bank statement shows more than six  
14 and a half million dollars in other subtractions, which is how  
15 wire transfers are listed. These transfers in the statement are  
16 at pages 1166 through 1168 of the Appendix. We have listed them  
17 out at paragraph 19 of our brief. I can walk through them if  
18 Your Honor would like, but they're – they're numerous. I can  
19 represent that they total more than \$11 million across April,  
20 June, and July. And June transfers are at pages 1380 to '86 of  
21 the Appendix. July transfers are at pages 1092 to 1093 of the  
22 Appendix.

23 We submit that none of these third parties had any  
24 reason to be paid out of the debtor's funds.

25 Third parties were not the only beneficiaries of the

*Plaintiff's Motion for Summary Judgment*

11

1       \$22 million in loan proceeds. Beside transferring money to  
2 those third parties, the debtor and his family arranged to  
3 conceal their assets through a complex series of transfers among  
4 their own diverse financial accounts.

5                  On June 2nd, 2022, \$3.8 million approximately was  
6 wired from the debtor's family Bank of America account to an  
7 investment account at Goldman Sachs, also in the debtor's name,  
8 along with the names of Raheel and Rozmeen. And the support for  
9 that is at page 1385 and 1395 of the Appendix.

10                 On July 15th, 2022, about six weeks later and on the  
11 eve of the Bhais' flight from the country, which we'll discuss  
12 in a minute, the Bhais transferred \$4,661,771 from Goldman Sachs  
13 back to yet another Bank of America account, this one in  
14 Rozmeen's name. That is in the Appendix at 1404.

15                 And just three days later, Your Honor, on July 18th,  
16 \$4,651,901.55 was transferred from Rozmeen's account back to the  
17 family Bank of America account. That shows – also shows on page  
18 1404.

19                 The obfuscation continued as the debtor and his family  
20 then moved to conceal assets and prepare to escape justice by  
21 converting the money into crypto currency. Your Honor is aware  
22 from our hearing last week of the transaction with Di Hao Zhang.  
23 The Bhais hired Mr. Zhang because he's active in the crypto  
24 space. He stayed at the Hampton Inn owned by the Bhais. And  
25 the debtor and Raheel drove from Dallas to near Austin to bring

*Plaintiff's Motion for Summary Judgment*

12

1 him to the Hampton Inn. That's per the debtor's own testimony  
2 at pages 709 to 710 of the Appendix. And that is part of the  
3 debtor's deposition transcript.

4                 On July 18th, two and a half million dollars was wired  
5 out of the family Bank of America account to Mr. Zhang. On July  
6 19th, another \$2.149 million was wired to Mr. Zhang. And on  
7 July 22nd, an additional total of \$260,260 was wired to Mr.  
8 Zhang. That's in the Appendix at page 495.

9                 At a minimum, the debtor was not only aware of the  
10 transaction with Mr. Zhang, he personally directed at least the  
11 two and a half million dollar wire transfer per the wire advice  
12 at page 496 of the Appendix, which lists him as the originator.

13                 I will now turn to how Benefit Street discovered that  
14 they had been defrauded.

15                 The debtor and his family were apparently not  
16 satisfied with defrauding Benefit Street once. And shortly  
17 after the loan closed, they approached Benefit Street for a  
18 second larger loan to be secured by a portfolio of Walgreens  
19 stores. During due diligence for the second loan, the Bhais  
20 provided Benefit Street with information that raised red flags  
21 and Benefit Street re-examined the loan — excuse me — the  
22 original Walgreens loan. At this point, Benefit Street learned  
23 it had been defrauded. That's — the support for that is at Mr.  
24 Goodman's (phonetic) declaration at page 1560.

25                 Benefit Street confronted Raheel, and he admitted to

*Plaintiff's Motion for Summary Judgment*

13

1 the scheme. He requested an opportunity to quickly repay the  
2 loan, and Benefit Street agreed, provided that that repayment  
3 came from legitimate funds. Also in the Appendix at page 1560.

4                 Ultimately, the Bhais agreed to a structure to repay  
5 Benefit Street and provide additional assurances. Specifically,  
6 on July 13th, Raheel and IBF, as the loan borrower, executed a  
7 forbearance agreement with Benefit Street. The forbearance  
8 agreement is in the Appendix at page 435.

9                 Under the forbearance agreement, Raheel and IBF, as  
10 the loan borrowers, admitted that they – that forged and  
11 falsified documents were submitted to Benefit Street, that  
12 Benefit Street relied on those documents to make the loan and  
13 would not have made the loan had the documents been true and  
14 correct, and that Raheel would not leave or transfer his assets  
15 outside the U.S. Raheel also executed an amended and restated  
16 guaranty of the loan. He was the original guarantor under the  
17 loan as well. And, for the first time, the debtor and Rozmeen  
18 executed guaranties of the entire loan and also agreed not to  
19 reduce their net worth or transfer any of their assets. I'm  
20 sorry. And the debtor's guaranty of the loan is in the Appendix  
21 at page 487.

22                 Negotiating and signing these agreements bought the  
23 Bhais some time. They used the time spent negotiating and the  
24 eight days after signing the forbearance documents to finish  
25 dissipating their assets, including the crypto currency

*Plaintiff's Motion for Summary Judgment*

14

1 transaction described above and putting their affairs in order  
2 for the next move. That next move was to disappear.

3 It's undisputed, and the debtor admitted in his  
4 deposition, that on July 21st, 2022, the debtor, Raheel, and  
5 Rozmeen. This is – deposition testimony is at page 711. The  
6 debtor testified that he drove and the family took either his  
7 Mercedes or a Range Rover that the family owned, and the family  
8 left the car in short-term parking at DFW. That's also at page  
9 711. I will note, Your Honor, that the family had no return  
10 flights booked.

11 The family stopped in Dubai where Raheel and Rozmeen  
12 connected on to Pakistan, while the debtor stayed with a friend  
13 in Sharjah in the United Arab Emirates for about three weeks.  
14 That's in the Appendix at page 712 to '13.

15 Ultimately, Your Honor, the debtor and his family  
16 stayed in Pakistan for approximately eight months. They  
17 admittedly did not return until they had made arrangements to  
18 address the legal consequences facing them in the United States.  
19 That's at page 714 of the Appendix.

20 The debtor also testified that he lost his Farmer's  
21 Insurance agency because of the length of time he was away.  
22 That's in the Appendix at pages 684 and 713.

23 And former employees of the Hampton Inn owned by the  
24 family have testified that when the fled, the Bhais removed  
25 boxes of documents from the Hampton Inn. They also left a

*Plaintiff's Motion for Summary Judgment*

15

1 shredder and bags of shredded documents at the hotel. This is  
2 in the Appendix at page 1549. That's a deposition of one of the  
3 hotel employees.

4           While the debtor and his family were away, Benefit  
5 Street sued them, naturally, and the businesses that they had  
6 used to defraud Benefit Street, and obtained a judgment for  
7 \$158,613,381.88 in damages, jointly and severally, plus  
8 15-percent postjudgment interest.

9           As for criminal consequences for the obvious  
10 misconduct here, the debtor and Rozmeen appear content to allow  
11 Raheel, their only child, to take all responsibility. He's  
12 negotiated a plea deal which, if approved, when he's eventually  
13 sentenced will see him facing a 10-year sentence for federal  
14 wire fraud.

15           The debtor filed, for his part, filed this Chapter 7  
16 case on April 5th of 2023. Benefit Street filed this proceeding  
17 on June 9th. As the Court is unfortunately aware, litigation of  
18 this case has been fraught, we submit, entirely as the result of  
19 obstructionist conduct by the debtor and his family.

20           The Court may of course take judicial notice of its  
21 orders in this case, including its multiple orders compelling  
22 the debtor, Raheel, and Rozmeen to comply with basic discovery  
23 obligations and ultimately sanctioning them. I will note that  
24 monetary sanctions ordered by the Court against the debtor  
25 remain unpaid.

*Plaintiff's Motion for Summary Judgment*

16

1           I submit, Your Honor, that the debtor's pervasive  
2 misconduct throughout this case, the abuse of process, and  
3 contempt for the Court's authority are all valid areas of  
4 concern and consideration as the Court evaluates the debtor's  
5 entitlement to a discharge. I also submit, Your Honor, that the  
6 Court can take Raheel and Rozmeen's litigation misconduct into  
7 account. Given the connection between the three living  
8 together, it seems fairly obvious and likely that they have  
9 coordinated their – their conduct in this case.

10           Turning to legal standards for summary judgment, Your  
11 Honor, the standards are well known and well understood. A  
12 party is entitled to summary judgment if it can demonstrate no  
13 issue of – genuine issue of material fact and that it's entitled  
14 to judgment as a matter of law. That of course is in Rule 56(a)  
15 and the *Celotex* case.

16           A fact issue is material if its resolution, one way or  
17 the other, affects the outcome of the action. That's from  
18 *Anderson versus Liberty Lobby*. Not every dispute is material.  
19 The mere existence of some alleged factual dispute between the  
20 parties will not defeat an otherwise properly-supported motion  
21 for summary judgment. A dispute-over-material-fact question is  
22 genuine if the evidence will permit a reasonable finder of fact  
23 to find in favor of the nonmovant.

24           In other words, the debtor's mere unsupported denials  
25 of Benefit Street's allegations don't, by themselves, create

*Plaintiff's Motion for Summary Judgment*

17

1 genuine disputes of fact.

2 And of course the Court should generally resolve facts  
3 and resolve disputes in favor of the nonmoving party.

4 As the Court knows, many of the Section 727 claims  
5 require a showing of the debtor's fraudulent intent, and we  
6 submit and will discuss further that there is ample evidence of  
7 that intent.

8 I also want to note that Benefit Street deposed  
9 Raheel, who asserted the Fifth Amendment privilege in response  
10 to every meaningful question. His deposition transcript is at  
11 pages 1308 to '31 of the Appendix.

12 We submit that it's appropriate for the Court, within  
13 the Court's discretion, to draw negative inferences against the  
14 debtor based on those assertions. There is case law -

15 THE COURT: Now it was -

16 MR. HERRING: Sorry.

17 THE COURT: - was Ray, Raheel -

18 MR. HERRING: Raheel.

19 THE COURT: - who asserted the Fifth.

20 MR. HERRING: Correct, Your Honor. The debtor did -  
21 never asserted the Fifth, just to correct the record -

22 THE COURT: Okay. I can make negative inferences as  
23 to the debtor with regard to his son's assertion of the Fifth?

24 MR. HERRING: There is case law supporting the idea  
25 that within the Court's discretion, you can draw the negative

*Plaintiff's Motion for Summary Judgment*

18

1 inference in a civil proceeding. The case I have for that is  
2 *FDIC versus Fiduciary and Deposit Company of Maryland* [sic];  
3 that is a Fifth Circuit case from 1995.

4 THE COURT: Where it was someone else asserting the  
5 Fifth, not a debtor -

6 MR. HERRING: Correct, Your Honor.

7 THE COURT: Okay.

8 MR. HERRING: Correct. That was not a bankruptcy  
9 case, but it was - it was a third party, not the litigant.

10 THE COURT: Okay.

11 MR. HERRING: Your Honor discussed this in a footnote.  
12 I'm not sure that you actually applied it in this case, but Your  
13 Honor discussed the possibility of doing it in a footnote in the  
14 *Correra* case, 589 B.R. 76, from 2018.

15 THE COURT: Um-hum.

16 MR. HERRING: The case law doesn't show that any  
17 special relationship between the nonparty invoking the Fifth  
18 Amendment and the party against whom the adverse interest is  
19 sought is required, but we do submit that the relationship  
20 between Ray and the debtor weighs in favor of the Court drawing  
21 the negative inference.

22 The debtor and Rozmeen's and Raheel's - well, Raheel's  
23 assertion of the Fifth and the debtor and Rozmeen's kind of  
24 collective ignorance or claimed ignorance and forgetfulness as  
25 to basically every material issue all strikes us as coordinated

*Plaintiff's Motion for Summary Judgment*

19

1 to make it as difficult or – as possible for Benefit Street or  
2 the Court to ferret out what really happened here.

3 I will pause at this point for any questions. But if  
4 not, I am prepared to go into each claim we have.

5 THE COURT: Go ahead.

6 MR. HERRING: Thank you. Okay.

7 Your Honor, Benefit Street's first claim for relief is  
8 under Section 523(a)(2)(A) for nondischargeability of Benefit  
9 Street's debt. The elements of nondischargeability under  
10 Section 523(a)(2)(A) are: That there was a debt for money,  
11 property, services, or an extension, renewal, or refinancing of  
12 credit; that the debt was obtained by false pretenses or false  
13 representation or actual fraud – other than a statement  
14 respecting the debtor's financial condition.

15 We think there are two theories under which summary  
16 judgment is appropriate under Section 523. First is our theory  
17 under the Supreme Court's recent decision in *Bartenwerfer*.  
18 *Bartenwerfer* of course held that a debt may be nondischargeable  
19 based on a nondebtor's fraudulent conduct because, as Justice  
20 Barrett explained, written in the passive voice, Section  
21 523(a)(2)(A) turns on how the money was obtained and not who  
22 committed the fraud to obtain it.

23 *Bartenwerfer* involved a debtor who, along with her  
24 boyfriend-later spouse, purchased a house in order to remodel it  
25 and flip it for a profit. The debtor herself was not primarily

*Plaintiff's Motion for Summary Judgment*

20

1 involved in the project, leaving it to her partner to manage it,  
2 manage the construction. The house sold, but it turned out to  
3 have had major defects, and the buyer sued the debtor and her  
4 partner for misrepresentations in the sale disclosures.

5           Although after litigation in state court, only the  
6 partner was found to have had fraudulent intent, the Ninth  
7 Circuit held that the claim against Ms. Bartenwerfer – excuse me  
8 – against Ms. Bartenwerfer was nondischargeable as a debt  
9 obtained by her partner's fraud, applying an earlier Supreme  
10 Court decision in *Strang versus Bradner* from 1885.

11           The Supreme Court agreed and reaffirmed *Strang*. Even  
12 though *Strang* was decided under the 1867 Bankruptcy Act, the  
13 passive language in the current statute, which actually didn't  
14 exist under the Bankruptcy Act, reinforced its applicability.

15           Even the minority concurring view of liability in  
16 *Bartenwerfer* held that this sort of imputed liability extends to  
17 business partners and other people within a sort of special  
18 relationship to the – to the party charged who actually  
19 committed fraud. We think *Bartenwerfer* clearly applies, and  
20 there is no genuine dispute of material fact.

21           First, Raheel expressly admitted in both the  
22 forbearance agreement and his plea agreement that he obtained  
23 the loan through fraud and that Benefit Street relied on that  
24 fraud in making the loan. That the loan was fraudulently  
25 obtained from Benefit Street is not subject to any genuine

*Plaintiff's Motion for Summary Judgment*

21

1 dispute. For purposes of 523(a)(2)(A), it is a debt obtained by  
2 fraud.

3 Second, there is no genuine dispute that the debtor is  
4 within the range of parties to whom liability could be imputed  
5 under *Bartenwerfer*, even as narrowly prescribed by the  
6 concurring opinion. The debtor, Raheel, and Rozmeen  
7 continuously lived together, ate meals together, shared  
8 financial accounts, and transacted business with – with others  
9 and among each other. Specifically, they worked together on the  
10 loan transaction. The debtor was aware of it despite his lies  
11 to the contrary. As mentioned, he even attempted to write the  
12 insurance policies on the collateral. And the debtor  
13 affirmatively and voluntarily guaranteed the loan and then fled  
14 together with the rest of the family when things fell apart.

15 It's clear to us that the debtor's relationship with  
16 Raheel vis-a-vis the loan is covered by *Bartenwerfer*. Because  
17 the debtor is liable on Benefit Street's debt and because it was  
18 incurred by Raheel's fraud, it is nondischargeable.

19 We also think, Your Honor, that the debtor would be  
20 liable under a traditional 523(a)(2)(A) theory.

21 Actual fraud under 523(a)(2)(A), under the classic  
22 method, requires the debtor to have made a false representation  
23 with intent to deceive the creditor that the creditor actually  
24 and justifiably relied on to its detriment. My cite for that is  
25 the *Zolnier* case, 2021 WestLaw, 5778461, Fifth Circuit, December

*Plaintiff's Motion for Summary Judgment*

22

1 6, '21 - 2021.

2           But additionally actual fraud for purposes of  
3 523(a)(2)(A) includes forms of fraud like fraudulent-conveyance  
4 schemes that can be effected without a false representation.  
5 And that's from the *Ritz* case in the Supreme Court, 578 U.S. 356  
6 from 2016.

7           Again, the debtor, Raheel, and Rozmeen lived together  
8 and worked together continuously in close quarters. The debtor  
9 was aware that the loan was being sought and attempted to earn a  
10 commission by ensuring the collateral. But, more tellingly, the  
11 debtor's postfraud actions indicate his direct involvement. He  
12 executed a guaranty of the loan that is completely nonsensical  
13 were he not involved in its origination. He actively  
14 participated in transferring and secreting the proceeds of the  
15 fraud. Finally, he fled the country indefinitely, only  
16 returning when he was safe in the sense that Raheel was taking  
17 on the family's collective criminal liability.

18           And, finally, the uncontroverted evidence presented in  
19 the motion has caught the debtor in his numerous lies and  
20 misrepresentations regarding his involvement in the family  
21 business, some of which we'll get to in a minute.

22           The debtor's liability to Benefit Street under Section  
23 523 has been established as a matter of law and a matter of  
24 genuine nondisputable fact. Summary judgment should be granted.

25           Benefit Street's second claim for relief under Section

*Plaintiff's Motion for Summary Judgment*

23

1 – is under Section 27(a)(2)(A), which would deny a debtor a  
2 discharge if they: With intent to hinder, delay, or defraud a  
3 creditor or the estate, have transferred, removed, destroyed,  
4 mutilated, or concealed property within one year before the  
5 petition date.

6 Intent is a necessary element. And in the Fifth  
7 Circuit, courts look to the following factors to determine  
8 intent – fraudulent intent. This is a six-factor test: Lack or  
9 inadequacy of consideration; a familiar or close relationship  
10 between the parties; retention of possession, benefit, or use of  
11 the property in question; financial condition of the debtor  
12 before and after the transaction; the existence of a pattern or  
13 course of conduct after the onset of financial problems or  
14 creditor suits or threats; and the general chronology of the  
15 events and transactions in question. That's from *In re Chastant*  
16 – Chastant, I assume – 873 F.2d 89, at 90, a Fifth Circuit 1989.

17 We have outlined the millions of dollars in transfers  
18 out of the debtor's account, all directly following and out of  
19 the proceeds of the loan, all within a year of the petition  
20 date. Indeed, all of these transactions occurred in the two or  
21 three months between the closing of the loan and the Bhais'  
22 flight from the country.

23 Moreover, the shuffling of millions of dollars through  
24 the debtor's account following the fraud, including the crypto  
25 currency transaction we described, fits within the definition of

*Plaintiff's Motion for Summary Judgment*

24

1 concealment. Uncontroverted evidence shows that the debtor  
2 directly participated in these transactions.

3 Moreover, there are substantial assets that are  
4 unaccounted for. None of the Bhais including the debtor have  
5 accounted for more than a million and a half dollars of jewelry  
6 or the disposition of the family's vehicles. These are not  
7 inconsequential transfers or a concealment. They point to an  
8 organized scheme to skim from the loan proceeds and then  
9 dissipate them out of the reach of the debtor's creditors.

10 The indicia of fraudulent intent under *Chastant* are  
11 present. Under these circumstances, summary judgment under  
12 727(a)(2)(A) is appropriate.

13 Our third claim for relief, Your Honor, is under  
14 Section 727(a) through (a)(3) —

15 THE COURT: Can I back up?

16 MR. HERRING: I'm sorry. Yes, Your Honor. Certainly.

17 THE COURT: The jewelry, what is my summary judgment  
18 evidence of jewelry? I remember very well, —

19 MR. HERRING: Sure. I'll —

20 THE COURT: — he said all I have is a \$20 Timex that's  
21 broken. I'm holding up my hand as though I can see —

22 MR. HERRING: Oh, sure.

23 THE COURT: — him. I can't see him. I just read it  
24 and had that visual image. And then you have mentioned that a  
25 jewelry box was found in the hotel after they left town, but I

*Plaintiff's Motion for Summary Judgment*

25

1 wasn't sure what other summary judgment evidence other than a  
2 picture of a box.

3 MR. HERRING: Sure, Your Honor. We'll come - we'll  
4 come back to this when we discuss the debtor's false oaths.  
5 But, to jump ahead to that, -

6 THE COURT: Okay.

7 MR. HERRING: - at pages 1235 through 1300 of the  
8 Appendix are jewelry store receipts that we obtained in  
9 discovery.

10 THE COURT: Okay. Govindji's.

11 MR. HERRING: Govindji's Jewelry, yes, Your Honor.

12 THE COURT: Okay.

13 MR. HERRING: The jewelry here consists of more than a  
14 122 karat gold - sets of gold bangles, some very expensive  
15 diamonds including an almost \$300,000 pair of earrings listed on  
16 the first page. These total up to more than a million and a  
17 half dollars, Your Honor. And despite these receipts, neither  
18 the debtor nor any of his family has been willing to be  
19 forthcoming about the existence or location of these items. The  
20 debtor claimed he had no idea about them. That's at pages 733  
21 to '34 of the Appendix in his deposition testimony; at page  
22 1328, where he -

23 THE COURT: Okay. And -

24 MR. HERRING: Sorry.

25 THE COURT: - all of these invoices are in the name of

*Plaintiff's Motion for Summary Judgment*

26

1 Raheel.

2 MR. HERRING: That's right, Your Honor.

3 THE COURT: Okay.

4 MR. HERRING: Raheel took the Fifth as to them. And  
5 Rozmeen also disavowed any knowledge of them.

6 THE COURT: Okay.

7 MR. HERRING: Okay, so.

8 THE COURT: Okay.

9 MR. HERRING: Okay. So turning back to Section  
10 727(a)(3), failure to maintain records, —

11 THE COURT: Um-hum.

12 MR. HERRING: — first we'd ask the Court to take  
13 judicial notice of the debtor's deficient discovery responses  
14 and other misconduct for which he's been sanctioned.

15 THE COURT: Okay.

16 MR. HERRING: Further, the debtor's own unbelievable  
17 testimony reinforces Benefit Street's evidence of the debtor's  
18 sophisticated finances, which he has failed to produce records  
19 of. Starting with financial accounts, in the schedules, the  
20 debtor listed only two Bank of America accounts that had been  
21 garnished and belatedly added a Goldman Sachs account.

22 Through third-party discovery, Benefit Street obtained  
23 evidence that is uncontrovertible of many undisclosed accounts  
24 for which the debtor has produced no records. For instance, the  
25 debtor, together with Raheel and Rozmeen, jointly held about 10

*Plaintiff's Motion for Summary Judgment*

27

1 Goldman Sachs investment accounts that at times it had millions  
2 of dollars in them. But the debtor disavowed knowledge of those  
3 accounts in his testimony. He stated in his deposition that he  
4 never worked with an investment advisor at Goldman. That's in  
5 the Appendix at page 691. And he stated the same, even when  
6 given those advisors' names and presented with emails sent to  
7 him by those advisors later on in his deposition. That's at  
8 page 728. And then the emails sent to him are at pages 1172 to  
9 '73.

10 And more of the same denials even when presented with  
11 a form which he admits having signed that claimed over \$6  
12 million in income and \$450 million in assets. That's in the  
13 Appendix at page 729 to '30 and page 1174.

14 And I'll mention, Your Honor, we don't believe that  
15 the family ever had \$450 million in assets. But we do believe  
16 that the debtor was aware of the existence of these Goldman  
17 accounts, based on his signature on the form for Goldman.

18 It isn't just the Goldman Sachs accounts, Your Honor.  
19 The debtor also produced no records and never disclosed the  
20 existence of a JPMorgan private client checking account with  
21 between 9,- and \$10 million in it, in his name, or another \$10  
22 million JPMorgan private client savings account. Those  
23 statements are at pages 1408 to '10 of the Appendix.

24 And the debtor never disclosed or produced any records  
25 related to a Guaranty Bank investment account held jointly

*Plaintiff's Motion for Summary Judgment*

28

1 between him and Rozmeen worth \$5 million at one point. That's  
2 in the Appendix at page 1411.

3 Next, the debtor failed, even upon request, to produce  
4 any records for the family's various businesses, including the  
5 following that he indisputably has or had an interest in: RIBA  
6 Hospitality Fund I, LLC, which owned the family's Hampton Inn.  
7 The debtor listed no interest or any disposition of any interest  
8 in RIBA. That R-I-B-A, for the record. But when it was formed,  
9 the debtor was both its registered agent and manager. That's in  
10 the Appendix at page 1414.

11 On the signature card for the RIBA bank account, also  
12 at Chase, he is listed as a member. Appendix, at page 1301.  
13 And a hotel employee, when deposed, described the debtor as,  
14 quote: Running everything, like he was, I guess, the  
15 ringleader, the – the boss. Appendix at 1547.

16 Despite overwhelming evidence that the debtor was  
17 involved in the ownership and management of RIBA and the Hampton  
18 Inn that it owned, in his deposition, the debtor flatly  
19 disavowed any knowledge and minimized his role with the hotel.  
20 That testimony is at page 695 and 735 of the Appendix.

21 IBA Properties, LLC, which is not the same as the  
22 borrower under the loan, was another family business. The  
23 debtor again disavowed any knowledge of IBA and its operations,  
24 and didn't schedule it. But the debtor executed documents  
25 authorizing the sale of property owned by IBA as its sole

*Plaintiff's Motion for Summary Judgment*

29

1 manager. That's in the Appendix at 1416 to '18. And, using a  
2 Hilton – this is kind of ironic – using a Hilton email address  
3 associated with the Hampton Inn, the debtor actively directed  
4 and approved that transaction. That's in the Appendix at 1447.

5 And, finally, the debtor disavowed any knowledge of or  
6 any involvement in IBF Properties, the loan borrower, Appendix  
7 at 696 or 703. But we already know about the email traffic  
8 related to the debtor's efforts to ensure that collateral  
9 properties and also that the debtor was listed on the IBF  
10 company website and in investor pitch materials as IBF's  
11 managing director, president, and cofounder. Those materials  
12 and website are at pages 295 to '96 and page 302 of the  
13 Appendix.

14 To keep going, the debtor also has failed to maintain  
15 accurate tax records or to tell us what is accurate. Benefit  
16 Street has been presented with for certain years vastly  
17 different tax returns, all apparently signed. The Court can  
18 compare the debtor's 2018 tax return, at Appendix 739 to '40,  
19 which he provided, reflecting just \$15,298 in income, with the  
20 debtor's 2018 tax return at Appendix 745 to '46, which reflected  
21 more than \$3.7 million in total income.

22 Similarly, you can compare the debtor's 2019 tax  
23 return at page 753 with the tax return at page 764, which shows  
24 a similar delta in income. And the debtor testified that he has  
25 not filed tax returns from 2021 forward. I believe the IRS'

*Plaintiff's Motion for Summary Judgment*

30

1 proof of claim in this case confirms that.

2 THE COURT: I saw the 2018 and the 2019 tax return.

3 Did you say there is a 2021 in the summary judgment -

4 MR. HERRING: No, Your Honor.

5 THE COURT: Okay.

6 MR. HERRING: And he has not filed from '21 forward,  
7 as we understand it.

8 THE COURT: Okay. From '20 forward, okay.

9 MR. HERRING: Right. So we have two 2018 returns and  
10 two 2019 returns.

11 THE COURT: Got it, um-hum.

12 MR. HERRING: To sum it up, the debtor's story about  
13 his recordkeeping and the evidence assembled by Benefit Street  
14 don't align in the slightest. The debtor's story is that in the  
15 years leading up to the bankruptcy filing, he was a  
16 self-employed insurance agent with modest assets and modest  
17 income. Confronted with documentation to the contrary, which he  
18 clearly knew existed but refused to produce, he's maintained  
19 these falsehoods.

20 The debtor cannot offer no justification for his  
21 failure to produce records and requires denial of his discharge.

22 Our fourth claim for relief is under Section  
23 727(a)(4), for the debtor's false oaths. Fraudulent intent and  
24 connection with Section 727(a)(4) can be demonstrated either  
25 under the *Chastant* factors or based on the debtor's reckless

*Plaintiff's Motion for Summary Judgment*

31

1 disregard for making truthful disclosures. Support for that  
2 comes from the *Bren* case out of the Eighth Circuit BAP in 2004  
3 and the *Chavin* case out of the Seventh Circuit in 1998.

4           As Judge Houser described it, the cumulative effect of  
5 falsehoods in bankruptcy documents may evidence a pattern of  
6 reckless and cavalier disregard for the truth to support  
7 fraudulent intent. And that is from the *Perez* case, 2007  
8 Bankruptcy Lexis 3124 at Star 21, from this district, September  
9 18th, 2007, citing to the *Sholdra* case, 249 F.3d 380, in the  
10 Fifth Circuit.

11           The debtor's false statements in this case are myriad.  
12 They include the numerous omissions of information about  
13 financial accounts, business interests, inaccurate income  
14 information that we just reviewed. They also include  
15 misinformation about the family's assets dating back to even  
16 before the fraud against Benefit Street. We talked about the  
17 jewelry already and – and the debtor and his family's  
18 unwillingness to discuss it at all.

19           The debtor also and pretty unconvincingly disavows any  
20 knowledge of the family's luxury vehicles owned up until the  
21 time they fled the country. Among these were a Bentley Bentayga  
22 SUV, a Range Rover, the debtor's Mercedes which he leased – and  
23 he has undoc'ed (phonetic) to the Mercedes; there's nothing  
24 necessarily problematic about that – and an Audi. Raheel  
25 purchased the Bentley and Range Rover at the same time, on

*Plaintiff's Motion for Summary Judgment*

32

1 December 24th, 2021, in the Appendix at pages 1199 and 1222, for  
2 a total purchase price of about \$382,000. He paid with a check  
3 drawn against an AccessBank account. That's at page 1234.

4 THE COURT: Against a what bank account?

5 MR. HERRING: AccessBank, Your Honor.

6 THE COURT: Access.

7 MR. HERRING: Interestingly, and these are in sales  
8 records that we obtained from the dealership where they  
9 purchased the Bentley and Range Rover, copies of the debtor's  
10 driver's license were in the sales paperwork. The debtor even  
11 confirmed it was his driver's license, at page 732 to '33 of his  
12 deposition testimony. So it seems obvious that the debtor was  
13 with Raheel when he bought the cars, and he likely even test  
14 drove them. The debtor obstinately denies ever being there.  
15 That's at page 733 of the Appendix.

16 Your Honor, this plus the jewelry, plus the financial  
17 accounts, plus the other things that I'm losing track of, the  
18 debtor has made no effort whatsoever to explain the  
19 discrepancies. For better or worse, the debtor has his story  
20 and he's sticking to it, even in the face of overwhelming  
21 evidence.

22 Your Honor, this establishes a reckless, at best,  
23 disregard for the truth. It establishes fraudulent intent.  
24 These mistruths are myriad and material. Summary judgment is  
25 appropriate under 727(a)(4).

*Plaintiff's Motion for Summary Judgment*

33

1                 Finally, briefly, under Section 727(a)(5), the debtor  
2 has failed to explain loss of assets to meet his liabilities.  
3 The evidence and factual support for this is cumulative of  
4 everything we've just discussed. We've identified millions of  
5 dollars in assets, apparent undisclosed income, about which the  
6 debtor is completely silent.

7                 Section 727(a)(5) requires no showing of intent, but  
8 even if – even if it was required, we have it, and we believe  
9 Benefit Street is entitled to judgment.

10                Your Honor, there's a sort of maxim, I think probably  
11 in the case law too, that summary judgment is rarely appropriate  
12 in litigation under Section 727, especially where there are  
13 intent questions involved. Here, however, there is an  
14 overwhelming weight of evidence that the debtor sat atop and  
15 played an intricate role in his family's remarkable misconduct.

16                To put it bluntly and sum it all up, the debtor and  
17 his family got \$150 million from Benefit Street – Street  
18 fraudulently, took nearly \$22 million of that money for  
19 themselves, transferred and secreted those loan proceeds and  
20 other assets through transactions, and fled the country to  
21 escape the consequences. Then the debtor returned but only  
22 after he felt comfortable that he personally faced no criminal  
23 liability and that he could use the bankruptcy system to escape  
24 his own indebtedness to Benefit Street. But to beat the drum  
25 once again, bankruptcy relief is for honest people. The debtor

*Plaintiff's Motion for Summary Judgment*

34

1 is certainly not honest. The evidence shows that dishonesty is  
2 probably the debtor and his family's lifework. And the record  
3 of the case shows that the debtor continues to openly mock this  
4 Court's authority and the integrity of the bankruptcy system.

5 We submit there are no genuine issues of material  
6 fact, and summary judgment should be granted. And if Your Honor  
7 has additional questions, I welcome them.

8 THE COURT: Not at this time.

9 MR. HERRING: Thank you, Your Honor.

10 THE COURT: Thank you.

11 Ms. Lindauer.

12 MS. LINDAUER: Thank you, Your Honor.

13 I think Your Honor was focusing on a lot of the issues  
14 that we were looking at as well, which is again I think what's  
15 important here is to focus on what did Mr. Bhai actually do. I  
16 mean so there are five pointers. One 523 complaint. There's a  
17 series of 727 complaints. But, again, what his son did or his  
18 wife did or other people may have done, they're not before this  
19 Court and they're not in bankruptcy. So Mr. Bhai is the one  
20 that's before this Court and in bankruptcy.

21 First of all, I think the majority of the allegations  
22 include two things the Court has to consider. One is most of  
23 the allegations include intent. And it's hard to derive intent  
24 from a series of documents. And even the testimony counsel has  
25 included negate the finding of intent because most of the

*Plaintiff's Motion for Summary Judgment*

35

1 allegations say: I didn't have anything to do with that, I  
2 didn't know – so again it will rely a lot on the credibility of  
3 how the Court views this witness. And Mr. Bhai, you met his  
4 son, but I don't think you've actually met Mr. Bhai, the father,  
5 who is the subject of this litigation.

6 So, so one, it concerns me that so many of these  
7 allegations do require an intent requirement, knowingly or  
8 fraudulently, knowingly and fraudulently, whatever. So that  
9 being the case, I think it's hard to derive intent when you have  
10 a series of documents, on one hand, and you have a deposition  
11 saying, 'I don't know anything about that.' You're going to  
12 have to judge the credibility of the witness.

13 And why do I say that? Because the trial setting in  
14 this case is just a month from now. It's in July. So it's not  
15 like we're having to wait a long time to get these issues  
16 resolved. I think the fact that the trial setting is July, the  
17 week of July 15th, and that the pretrial is coming up also, that  
18 tells me that I think the Court should be inclined to not grant  
19 summary judgment, particularly on issues that do require you to  
20 review what is actually going on here.

21 But I think the Court hit the nail on the head, and  
22 I'm going to have Ms. Ollar pull up some of these documents that  
23 you may have already looked at, but, for example, going through  
24 the documents that they reference, starting with the loan  
25 agreement. Of course Mr. Ismail Bhai had nothing to do with the

*Plaintiff's Motion for Summary Judgment*

36

1 signing of the loan agreement. We can go to that.

2 That's Exhibit A, Sydney, if you want to pull that up.

3 (Counsel confer off record.)

4 MS. LINDAUER: Okay. The page number on that would be  
5 – and I'm going with their reference – 121. There you go.

6 So that's the original loan agreement and that's what  
7 starts the basic disagreement between IBF Properties, as the  
8 borrower, and BSRPT [sic] CRE Finance, LLC, the lender.

9 If you go down to the signature pages on that  
10 document, at the very end. There you go.

11 So IBF Properties, the Texas – Texas limited liability  
12 company, by IBF Properties WAL Group I, LLC, managing member,  
13 Raheel Bhai. And that becomes important because IBF Properties,  
14 IBF Properties WAL Group I, LLC, you're not going to see Ismail  
15 Bhai's signature or name associated with those entities.  
16 They're Raheel Bhai's entities.

17 The same thing would hold true for the promissory  
18 note. That's Exhibit B. That's at page 283.

19 And then if we drop to the next document that I think  
20 is important, is the forbearance agreement.

21 THE COURT: Let me – let me stop you –

22 MS. LINDAUER: Sure.

23 THE COURT: – right there. As you could glean from my  
24 questions, I have zeroed in on the fact that –

25 MS. LINDAUER: Yeah.

*Plaintiff's Motion for Summary Judgment*

37

1                   THE COURT: - it was Raheel who signed the loan  
2 agreement, it was Raheel who signed the promissory notes. But I  
3 do have summary judgment evidence that I don't think you've  
4 refuted, your client has refuted, that IBF - you know, there's -  
5 there are marketing materials out there that show the debtor is  
6 a co-founder and president and managing director. And then  
7 there are emails and summary judgment evidence showing he was in  
8 the loop with some of the lender discussions about getting  
9 insurance.

10                  MS. LINDAUER: Sure.

11                  THE COURT: So it's -

12                  MS. LINDAUER: So -

13                  THE COURT: Mr. Herring is saying I could make an  
14 inference from the unrefuted summary judgment evidence that the  
15 debtor was very much in the loop about this loan.

16                  MS. LINDAUER: Yeah. I don't think that that's  
17 unrefuted summary judgment evidence. So I think if you go to  
18 our response to the motion for summary judgment, particularly -  
19 I know what you're talking about - Exhibit B.

20                  If you want to pull that up, Sydney, that's page 297.  
21 That's the slides regarding IBF Holdings.

22                  THE COURT: Um-hum.

23                  MS. LINDAUER: Right. So, first of all, there's no  
24 testimony before you who prepared this slide show and if, in  
25 fact, Mr. Ismail Bhai had anything to do with it.

*Plaintiff's Motion for Summary Judgment*

38

1           And you can scan down, Sydney. Go down a couple  
2 pages.

3           And, in fact, I think his testimony was pretty clear  
4 that he didn't know anything about this slide show and he did  
5 not provide any of the information –

6           THE COURT: That's in the summary judgment evidence.  
7 It's definition testimony regarding the slide deck and –

8           MS. LINDAUER: No. I think – I don't think they  
9 referenced it in the depositions. But in our response, which  
10 was verified with – with a declaration, we denied having any  
11 knowledge or involvement in preparing this website.

12           THE COURT: Okay.

13           MS. LINDAUER: So –

14           THE COURT: It – point that out –

15           MS. LINDAUER: Okay.

16           THE COURT: – and then we're going to talk about it a  
17 little more.

18           MS. LINDAUER: Okay.

19           THE COURT: Where is the specific –

20           MS. LINDAUER: Okay, so let's find the specific  
21 allegation. Okay, hang on.

22           THE COURT: Okay. Maybe paragraph 50.

23           MS. LINDAUER: Pick up –

24           THE COURT: Of your response.

25           MS. LINDAUER: Right. Also I think paragraph – start

*Plaintiff's Motion for Summary Judgment*

39

1 with paragraph 8: Defendant admits the allegation in paragraph  
2 8 to the extent Raheel Bhai's ownership of IBF but denies the  
3 allegation that defendant jointly owned and controlled it with  
4 his son. At such – as such, this is a disputed fact question.

5 That's paragraph –

6 THE COURT: Okay. Let me ask you a very –

7 MS. LINDAUER: Sure.

8 THE COURT: – pointed summary judgment question. Is  
9 it really –

10 MS. LINDAUER: Sure.

11 THE COURT: – enough to simply have a one- or  
12 two-paragraph affidavit of the debtor saying, 'I adopt  
13 everything in the pleading, the response'?

14 MS. LINDAUER: 'As my sworn testimony'?

15 THE COURT: Yeah. I mean the case law says you have  
16 to go beyond the pleadings –

17 MS. LINDAUER: Right.

18 THE COURT: – and be more specific, doesn't it?

19 MS. LINDAUER: Well, –

20 THE COURT: To create a fact issue. You can't just  
21 throw a metaphysical doubt out there, to use the U.S. Supreme  
22 Court's words? I mean is this really enough?

23 MS. LINDAUER: Your Honor, –

24 THE COURT: Fifteen hundred pages versus a  
25 one-paragraph 'I adopt everything in the pleading my lawyer

*Plaintiff's Motion for Summary Judgment*

40

1 filed.'

2 MS. LINDAUER: Well, but the pleading 'my lawyer  
3 filed' was how many pages? The pleading that 'my lawyer filed'  
4 was 18 pages. So it wasn't a two-page -

5 THE COURT: Well, - okay. Well, I shouldn't have  
6 mentioned page numbers, because that was misleading. I'm just  
7 saying I have not one piece of summary judgment evidence from  
8 you except a declaration saying, 'I adopt my counsel's  
9 response.' I'm sure procedurally that is sufficient in a  
10 summary judgment context.

11 MS. LINDAUER: Okay. But - okay. But let's turn it  
12 the other way. Is including a website where there is no proof  
13 that my client had anything to do with preparing that website,  
14 posting that website, or providing the information that's in  
15 that website to just copy something off of the internet and say,  
16 'Look, it mentions his name,' is that -

17 THE COURT: Well, -

18 MS. LINDAUER: - enough?

19 THE COURT: - he's thrown it out there. And then -

20 MS. LINDAUER: Right.

21 THE COURT: - you rebut it with something.

22 MS. LINDAUER: Right. And I said -

23 THE COURT: And I'm not sure I haven't -

24 MS. LINDAUER: - we - and I said we deny the  
25 information, obviously, presented in that website, right? So

*Plaintiff's Motion for Summary Judgment*

41

1 other than – and there was no deposition taken that said this  
2 was my website or I agree with the information provided in the  
3 website. So, again, you know, I would argue that that is  
4 sufficient to – again, they have the burden. They've got – by a  
5 preponderance of the evidence, they've got to convince you that  
6 that website –

7 THE COURT: Well, it's not preponderance of the  
8 evidence. It's they have to show there is no material fact –

9 MS. LINDAUER: Fact issue.

10 THE COURT: – in dispute.

11 MS. LINDAUER: Right.

12 THE COURT: And –

13 MS. LINDAUER: And we have raised –

14 THE COURT: – and so they put something out there,  
15 1500 pages, and it's up to you to go beyond the pleadings,  
16 saying: There's a material fact issue here.

17 MS. LINDAUER: Right.

18 THE COURT: And I'm not sure – again, that was the  
19 basis for my question.

20 MS. LINDAUER: Okay.

21 THE COURT: The Supreme Court says you have to create  
22 – create more than a metaphysical doubt. If all you have is a  
23 pleading admitting and denying and, you know, throwing a few –

24 MS. LINDAUER: Right.

25 THE COURT: – extra statements out there, and then a

*Plaintiff's Motion for Summary Judgment*

42

1 one-paragraph 'I accept this as my sworn testimony,' I just  
2 don't know procedurally if that's enough.

3 MS. LINDAUER: Right.

4 THE COURT: I'm scratching my head over that.

5 MS. LINDAUER: Well, but again wouldn't the best proof  
6 of the ownership of IBF be the corporate documents showing the  
7 ownership of IBF versus a website that just merely mentions my  
8 client as one of the possible owners, directors, officers,  
9 managers, whatever, without any information as to who created  
10 the website?

11 THE COURT: I - I agree that -

12 MS. LINDAUER: Yes.

13 THE COURT: - we would absolutely have to go to trial  
14 if we had that, -

15 MS. LINDAUER: Right.

16 THE COURT: - but I don't. And so I -

17 MS. LINDAUER: Well, but, Your Honor, that's the way  
18 we approached - if you will recall, we did ask for an extension  
19 to file our response. The other side opposed that. So we filed  
20 our response.

21 THE COURT: Okay. I don't recall that.

22 MS. LINDAUER: So - it's on the docket.

23 THE COURT: It - okay. It may be on the docket, but I  
24 just -

25 MS. LINDAUER: It's on the docket, Your Honor.

*Plaintiff's Motion for Summary Judgment*

43

1 THE COURT: Okay.

2 MS. LINDAUER: We asked for an extension, because we  
3 got an 1800-page appendix. And we did ask for an extension.  
4 They opposed that. And rather run the risk of not filing a  
5 response, we filed a response.

6 Now we still have an extension on file with you.  
7 That's never been withdrawn. It's still out there. So if you  
8 think that the evidence we have presented, when I think is not  
9 sufficient, then I do think I should have an opportunity to  
10 provide perhaps a affidavit in greater detail. But, again, all  
11 it's going to say is exactly what our response says, which is –  
12 denies that jointly owned and controlled it. So I mean it's  
13 going to be exactly the same as – as what's in the response  
14 itself, which is adopted in the declaration.

15 THE COURT: Okay.

16 MS. LINDAUER: Okay. I understand your position, Your  
17 Honor. My – my point being that the bulk of the documents they  
18 have provided to you don't support their claims, and that's  
19 what's troubling. And you've got 1800 pages of an appendix that  
20 don't support their claims.

21 So, for example, my client had nothing to do with the  
22 loan agreement; nothing to do with the promissory notes.  
23 Frankly, no proof that he had anything to do with the website  
24 other than his name appears on there, but there's no evidence  
25 that he had anything to do with the website, any input into the

*Plaintiff's Motion for Summary Judgment*

44

1 website or participated in the website, or the slides that were  
2 provided.

3 He didn't sign the guaranty that was signed by Raheel  
4 Bhai. Didn't sign the guaranty that was signed by Rozmeen Bhai.  
5 The only guaranty he did sign was Exhibit I, which is a guaranty  
6 of the forbearance agreement, not the original document.

7 What's even more troubling is they do go get a  
8 judgment. They got a state court judgment, Exhibit M. If you  
9 look at Exhibit M.

10 If you will pull that up, Sydney – that's 504. And  
11 the actual judgment is 548.

12 Here is the judgment that they got, which was  
13 obviously final judgment. It was a default judgment.

14 If you scroll down.

15 The judgment they took against Mr. Ismail Bhai. If  
16 you run up again, of course there is no finding of fraud,  
17 misrepresentation, or any wrongdoing as against Mr. Ismail Bhai.

18 If you will drop down again, Sydney. Next page.

19 And if you look, there is a Raheel Bhai exemplary  
20 damages against him that appears in paragraph d. If that's your  
21 postjudgment, exemplary damages in the amount of – with  
22 postjudgment. So, again, no exemplary damages against Ismail  
23 Bhai. And, frankly, no findings in that judgment whatsoever of  
24 any wrongdoing. That's where you would normally find a 523  
25 complaint, if one exists, and you were seeking some sort of

*Plaintiff's Motion for Summary Judgment*

45

1 judgment on that 523 complaint.

2           Perfectly honest, there is no evidence in this record  
3 that Ismail Bhai did anything under 523 that would amount to  
4 false pretenses, false representations, or actual fraud. What  
5 they want you to do is impute the wrongdoing of Raheel Bhai to  
6 Ismail Bhai.

7           THE COURT: Let me – let me stop you –

8           MS. LINDAUER: Sure.

9           THE COURT: – on one thing. The guaranty, which –

10          MS. LINDAUER: Is Exhibit –

11          THE COURT: Well, I –

12          MS. LINDAUER: – 478 –

13          THE COURT: Yes.

14          MS. LINDAUER: – page 478.

15          THE COURT: And I do read it to be a guaranty of all  
16 obligations.

17          MS. LINDAUER: Okay.

18          THE COURT: And I'm looking at 1.2. I don't think it  
19 – you said a guaranty of the forbearance agreement amounts –

20          MS. LINDAUER: Well, it was signed – I'm sorry. You  
21 know, correct me, but it was signed at the same time that the  
22 forbearance agreement was signed.

23          THE COURT: Yes, yes.

24          MS. LINDAUER: Right.

25          THE COURT: I read that, I understood that. But –

*Plaintiff's Motion for Summary Judgment*

46

1 MS. LINDAUER: So – but, again, if your false  
2 representation befalls actual fraud, that's at the time that you  
3 take out a loan –

4 THE COURT: Well, –

5 MS. LINDAUER: So, but again, –

6 THE COURT: – and I'm getting to my –

7 MS. LINDAUER: Right.

8 THE COURT: – my question.

9 MS. LINDAUER: If you can pull that up, Sydney, 475.

10 THE COURT: If you look at page 485, paragraph 3.4.

11 MS. LINDAUER: Okay.

12 THE COURT: Here is something I got concerned about –

13 MS. LINDAUER: Okay.

14 THE COURT: – in preparing for today: Guarantor's  
15 financial condition. As of the date hereof, and after giving  
16 effect to the guaranty and the contingent obligation evidence  
17 hereby, guarantor is and will be solvent and has and will have  
18 assets, which, fairly valued, exceed its obligations,  
19 liabilities, including contingent liabilities and debts, and has  
20 and will have property and assets sufficient to satisfy and  
21 repay its obligations and liabilities, including the guaranteed  
22 obligations.

23 I think – I think it is woven in the lengthy complaint  
24 and motion that this might have been a misrepresentation on –  
25 definitely on behalf of Ismail as opposed to Raheel.

*Plaintiff's Motion for Summary Judgment*

47

1 MS. LINDAUER: So if you go to 523(a)(2)(A), it says:  
2 Money, property, or services, or refinancing to the extent  
3 obtained by false pretenses, false representation – other than a  
4 statement respecting the debtor's or an insider's financial  
5 condition.

6 So if you're – I don't know how you read that, but the  
7 way I read it is if it's a statement regarding the debtor-  
8 insider's financial condition, then that's an exception to the  
9 false pretenses, false, or actual fraud.

10 So, look, there is no dispute –

11 THE COURT: No, no, no, no, no.

12 MS. LINDAUER: Okay, well, then how do you read that –

13 THE COURT: Well, but go – well, try 523 –

14 MS. LINDAUER: (a)?

15 THE COURT: (2).

16 MS. LINDAUER: (A)? Not (B).

17 THE COURT: Oh, so you're saying because they didn't  
18 see (B)?

19 MS. LINDAUER: (B), correct.

20 THE COURT: 523(a)(2)(B)?

21 MS. LINDAUER: Right.

22 THE COURT: That which is established on that.

23 MS. LINDAUER: Yeah. Because – because obviously that  
24 would be a statement regarding the debtor's financial condition  
25 that he had sufficient – plus, again, you have to go back and

*Plaintiff's Motion for Summary Judgment*

48

1 also read – their only 523 complaint is 523(a) (2) (A), period,  
2 okay? So you have to find there is some kind of false  
3 pretenses, false representation, or actual fraud, full stop,  
4 okay.

5 So, again, let's be real clear here. If you read the  
6 deposition transcript of Ismail Bhai, he's going to tell you  
7 that he went over to Nelson Mullins' office. They presented him  
8 with a stack of documents. He had no lawyer present. He was  
9 instructed by various persons to sign those documents, and he  
10 did. Okay. But clearly this provision would be one regarding  
11 financial condition. And clearly everyone knew that he didn't  
12 have the – \$155 million. I mean they're just – where would he  
13 have had that money?

14 Because looking at the closing statement. They didn't  
15 walk away with \$155 million. So, again, – but so, Your Honor, I  
16 would argue that – that that is not part of what they pled for  
17 and that they don't have facts to show that at the time of the  
18 execution of the loan agreement, the guarantor – the guaranty  
19 agreement, or forbearance agreement, that there was any actual  
20 fraud.

21 I question whether there was even any consideration  
22 given to Ismail to sign that, because, frankly, he wasn't a  
23 borrower on the debt. But he agreed to sign this to support, I  
24 guess, his son or the business, so, anyway, yeah.

25 So I real feel like that that – the 523, you can take

*Plaintiff's Motion for Summary Judgment*

49

1 it up at the time of trial, but I don't think there's evidence  
2 to support a summary judgment on a finding of fraud.

3 THE COURT: Okay.

4 MS. LINDAUER: Going through the 727 elements, the  
5 problem that you run into each of those too, for in large part,  
6 if you look at each one of those, there has to be a showing of  
7 some sort of intent. So, for example, if you look at 727(a)(2):  
8 The debtor, with intent to hinder, delay, or defraud a creditor,  
9 or an officer of the estate charged with – has transferred,  
10 removed, destroyed within one year before the date of filing or  
11 after the date of filing. So this, you got to be careful about,  
12 because if you look at their exhibits, a lot of their exhibits  
13 are 2020 and 2021. Now it's one year before and after, right,  
14 that's the test under that provision. So you got to look at the  
15 time periods that they're complaining about.

16 And the reason I mention that is because if you look  
17 at some of these bank statements that they're having you rely  
18 on, some of those go back earlier than the one year before the  
19 filing of the bankruptcy. They're much – they're an earlier  
20 period of time than that. And so I think you have to look at  
21 what they have actually given you. And I was going to try to  
22 grab one of those real quick and show you, but you can look at  
23 them. But, again, you have to look at the operative period of  
24 time that we're talking about.

25 And we have to look at – and, again, when you get into

*Plaintiff's Motion for Summary Judgment*

50

1 these intent issues, I feel like you have to try that issue  
2 because you got to judge the credibility of these witnesses.

3 You may think he's not a credible witness. I don't  
4 know. But, again, these are heavy fact questions about whether  
5 there is a fact issue here or not.

6 Let me jump to the next one. The tax returns. Let me  
7 – let me just show you somewhere of these. These are – these  
8 are troubling at best. But I mean if we look at, for example,  
9 739.

10 If you can pull that one up, Sydney.

11 Okay. So these are the – this is the tax return that  
12 shows how much money Mr. Bhai made in 2018. If you drop –

13 THE COURT: And this is dated August 29th?

14 MS. LINDAUER: I don't read that.

15 THE COURT: Of 2023?

16 MS. LINDAUER: Your guess is as good as mine, Your  
17 Honor, on what the date on that is. I can't tell. Or is it  
18 2020?

19 THE COURT: I don't know, but it's the second one. He  
20 filed an earlier one –

21 MS. LINDAUER: Okay, so look at that one. Then look –  
22 okay, so let's scan down on this one, Sydney, a little bit.

23 And the other thing you have to read in his  
24 depositions is – is he will tell you throughout his deposition  
25 that some of these things are things he did not prepare and he

*Plaintiff's Motion for Summary Judgment*

51

1 did not sign. Okay. So let me give you an example.

2 Go back up a little, Sydney, on that one.

3 Look at the signature on — okay, right there — on this  
4 one, on this tax return, okay? Keep that in mind.

5 Okay, go to the next 2018 tax return. That's 745.

6 There you go.

7 Okay, 2018 tax return. Now look at the signature on  
8 this one. And if you put those signatures next to each other,  
9 you're going to get a lot of testimony, and this is in their  
10 record they designated where he says, 'I'm not familiar with  
11 these documents and that's not my signature.' And you can tell  
12 looking, comparing those signatures that they don't look  
13 similar.

14 This one is dated 2/18 of '18, okay.

15 THE COURT: Yeah, before the tax year.

16 MS. LINDAUER: I know, I know. So that's what I'm  
17 saying.

18 This — okay, but drop on down. Go ahead. Go ahead  
19 drop down.

20 But this one is even more troubling, because he  
21 claims, first of all, it's a forgery.

22 But keep going. Go on down.

23 This is the one that has the big dollars in it.

24 But keep going. Okay, stop there. And go back,  
25 Sydney.

*Plaintiff's Motion for Summary Judgment*

52

1               Okay. So we have income or losses from partnerships.  
2 HKS and Managers I, Limited Cross, you probably haven't seen  
3 that name anywhere else. RK Hospitality Magnus and Hotels. HC  
4 Dallas, LLC. And then: See schedule attached. Okay. Mr.  
5 Ismail Bhai never owned an interest in any of these businesses.

6               THE COURT: And do I have his sworn testimony to that  
7 effect?

8               MS. LINDAUER: He – you – well, I don't know if it  
9 identifies these businesses, but you're going to have his  
10 deposition testimony where he's going to tell you he doesn't  
11 know anything about this tax return. You do have that –

12              THE COURT: Do I have that?

13              MS. LINDAUER: You have –

14              THE COURT: His deposition testimony in this –

15              MS. LINDAUER: Yes.

16              THE COURT: – 1600 pages, or whatever it is –

17              MS. LINDAUER: You do, Your Honor. You have his  
18 deposition testimony.

19               And then drop down, Sydney, if you can. And let's  
20 take a look – okay, let's go to – go to the 2019. That's 753.  
21 Go back up.

22              THE COURT: So he basically says: Someone committed  
23 identity fraud on me and filed tax returns –

24              MS. LINDAUER: He basically says –

25              THE COURT: – that –

*Plaintiff's Motion for Summary Judgment*

53

1 MS. LINDAUER: – he doesn't know anything about these  
2 tax returns, and that's not his signatures on these tax returns,  
3 is what he's going to tell you.

4 Okay, so go to 2019.

5 So this is the tax return for 2019. Again, you know,  
6 modest amount of income here.

7 Okay, keep going. Okay.

8 And, let's remember, these are the tax returns that  
9 Benefit Street would have had potentially when he signed  
10 forbearance agreement guaranties, when they signed those  
11 documents, twenty eight – 2019, right? So –

12 THE COURT: Yeah, how do I know that?

13 MS. LINDAUER: I'm sorry?

14 THE COURT: How do I know that?

15 MS. LINDAUER: Well, I mean they have them now. I  
16 don't know when they got them, but –

17 THE COURT: I know they had them back then.

18 MS. LINDAUER: – they have – they clearly have them  
19 now, but – okay, go on down.

20 But what I'm saying is there is no reason for them to  
21 believe that his financial condition was anything different than  
22 what's showing up here.

23 Go to the next one. Go to the 2019, 761 –

24 THE COURT: It's their fault – it's their fault they  
25 lent the company money –

*Plaintiff's Motion for Summary Judgment*

54

1 MS. LINDAUER: No. But, remember, they didn't loan  
2 the money to him. So, you know, again, let's keep - we're  
3 talking about somebody that joined in the fight here, probably  
4 wrongfully.

5 But, anyway, keep going, Sydney. Go to the next one.  
6 The 20- - keep going. You have to go onto another page.  
7 They're out - the pages are a bit out of order here.

8 Okay. This is another one that's got the big numbers  
9 on it. Okay, but let's stop here.

10 Okay. So on the 2019, here are all the businesses  
11 apparently he has some kind of interest in. RK Hospitality, LLB  
12 Milwaukee, HC Dallas, Supreme Bright. Hospitality Leo,  
13 Hospitality Northwest Airport, so on and so forth. And he's  
14 going to tell you that he doesn't know anything about these tax  
15 returns. And that's pretty accurate, looking at that.

16 Go back - go back and look at his signature too. I  
17 think you will see the signature page doesn't track with  
18 anything that you have seen before.

19 There you go. I think this is actually - this - so  
20 these are out of order. I think that's the signature page from  
21 a different return. You might have to go down further, Sydney.  
22 Some of these pages are out of order.

23 But - but what I'm trying to show you, Judge, is that  
24 - is that the evidence you have in front of you, first of all,  
25 it's contradictory; but, second of all, frankly, it doesn't make

*Plaintiff's Motion for Summary Judgment*

55

1 any sense. And if you mesh that with his deposition testimony,  
2 he will tell you that he didn't sign these and these were not  
3 his tax – the first ones were. But not these – these ones with  
4 these ginormous – ginormous amounts.

5 And – and, frankly, Benefit Street Partners isn't  
6 complaining that he failed to list all of those businesses in  
7 his bankruptcy, which the lookback is four years. So the 2019  
8 businesses should have been in his bankruptcy. Well, – and,  
9 again, – okay, here's his signature on the – you can tell that's  
10 a different signature. That – this is the 2019 Ismail Bhai.  
11 And – and you can see that that's – that's a different signature  
12 than the one that you've seen before.

13 Let me jump, because –

14 THE COURT: Are we going to have a handwriting expert  
15 if we have a trial on this? I mean I just – maybe I should have  
16 gleaned from the massive paper I read that I had no idea there  
17 was going to be an issue raised about the validity of a 2018 and  
18 2019 tax return in the summary judgment record.

19 MS. LINDAUER: Well, I mean I think that the evidence  
20 before you, if you read the deposition transcript and you look  
21 at the exhibits, clearly he testifies in his deposition, because  
22 he did give his deposition for about five hours, he does testify  
23 that –

24 THE COURT: Okay.

25 MS. LINDAUER: – that – yeah. So –

*Plaintiff's Motion for Summary Judgment*

56

1           THE COURT: So I have five hours of deposition  
2 testimony in there?

3           MS. LINDAUER: From Mr. Bhai, yeah, you do.

4           THE COURT: Okay. Well, you know what the Fifth  
5 Circuit says, right?

6           MS. LINDAUER: Yeah.

7           THE COURT: The trial judge should not have to shift  
8 through a giant summary judgment record to find tidbits that  
9 are, you know, relevant and dispositive —

10          MS. LINDAUER: I know.

11          THE COURT: You need to point out in your papers what  
12 I need to focus on.

13          MS. LINDAUER: Well, I can point out what I think you  
14 should focus on. But, again, I'm not the movant on this, so it  
15 would have been helpful — and now you know why I asked for an  
16 extension, because, again, 1800 pages of an appendix is a little  
17 overwhelming, right? Let —

18          THE COURT: You know it happens to me all the time,  
19 okay, so I would not have immediately — it's just welcome to my  
20 world. Anyway, —

21          MS. LINDAUER: Okay. All right. Let's — I'd like to  
22 take a look at a few other documents, though, because I think,  
23 again, these go to some of what you're looking at here. For  
24 example, — and you've hit on it, I think, on the vehicle  
25 records. The vehicle records, those appear — we'll get to

*Plaintiff's Motion for Summary Judgment*

57

1 those. Let me find those for you.

2 You also have Rozmeen's deposition as well. And –  
3 and, well, and of course Ray.

4 Let me see, let me find the vehicle records. Those  
5 are... That is on page... Let's see. I think that's... Find  
6 it. Okay, here we go.

7 Take a look at – well, it – you already went over the  
8 jewelry. I think you – you under – followed the jewelry not  
9 being in Mr. Ismail Bhai's name. Let's go to the vehicles.

10 The vehicles start on – that would be like 1174 –  
11 actually, let's start with the 1192. Okay, so starting with the  
12 vehicles, like on 1192, this is for the Land Rover that was  
13 purchased – if you drop down a little bit, you're going to see  
14 the customer's name on all of the vehicles – go on down a little  
15 bit further, Sydney – are going to be under Ray Bhai. None of  
16 them were under Ismail Bhai. So keep going.

17 Okay, you can – you can actually, I guess, go to the –  
18 there you go. There's one there. Okay, so stop right there.

19 So you will see Ray Bhai and – and you will see Ray  
20 Bhai, 2017 Land Rover, Range Rover sales price, et cetera. And  
21 obviously signed off on by Ray Bhai, 12/24 of '21.

22 Drop on down further.

23 THE COURT: Should I care about "Customer did not pay  
24 for product" up above?

25 MS. LINDAUER: Where? On that page?

*Plaintiff's Motion for Summary Judgment*

58

1 THE COURT: Um-hum.

2 MS. LINDAUER: I think – well, that just means that he  
3 didn't pay for, I guess, it was tires and wheels, or whatever  
4 they were doing –

5 THE COURT: Okay. Okay.

6 MS. LINDAUER: I don't think so.

7 Keep on going down. Okay, oh, go back up.

8 And – and really what I'm just trying to show you is  
9 that all the way through here, again like this is retail  
10 purchase agreement, Raheel Bhai.

11 And there is a little confusion because it's Raheel  
12 Ismail Bhai, so you have to look at the whole name, because  
13 sometimes it's a little hard to follow the whole name, but – but  
14 you can see here it's Raheel I. Bhai. So his full name is  
15 Raheel Ismail Bhai. But I can't – go on down further.

16 But I'll represent to the Court that none of the  
17 vehicles, not a one, are under the name of Ismail Bhai. None of  
18 the jewelry is under the name of Ismail – Ismail Bhai.

19 Now let's talk about the bank accounts. And you do  
20 have the deposition transcripts. Those are all before the  
21 Court. And – but if you drop on down to the bank accounts, so,  
22 for example, take a look at 1368. Okay, so this is the EPI  
23 Commercial, LLC account. And if we drop on down on that  
24 account, that's the one that had the \$21 million in it. And  
25 this is the account that the 215065 was – was taken out of.

*Plaintiff's Motion for Summary Judgment*

59

1 Go on down. Okay.

2 And now we're to a different account which is a Bank  
3 of America account.

4 So go back up to EPI.

5 What you don't have is you don't have anything that  
6 shows who actually transferred the \$21 million out of that  
7 account and you don't have anything that shows that Ismail Bhai  
8 has any particular relationship to the funds that were removed  
9 from that account.

10 Now go on down. What -

11 THE COURT: His name is shown on the account.

12 MS. LINDAUER: Not on this one, not on EPI. His name  
13 is on the next account.

14 Go to the next one.

15 And what the testimony is going to tell you on that  
16 account -

17 THE COURT: It's right there.

18 MS. LINDAUER: Right, right. But what he's going to  
19 tell you is that him and his wife were accommodation to their  
20 son Raheel on that account. And that they had nothing to do  
21 with any of the money - I'm just - that's the testimony -

22 THE COURT: I don't know what that means,  
23 accommodation to the son, who's -

24 MS. LINDAUER: Well, because these are the - these are  
25 the parents. So like if Raheel were to die, then they're on

*Plaintiff's Motion for Summary Judgment*

60

1 that account. It'd be like if you had an account that you had -

2 THE COURT: It's a -

3 MS. LINDAUER: Yeah.

4 THE COURT: The debtor has a property interest in the  
5 account.

6 MS. LINDAUER: Well, he may. Again, you have to have  
7 the account information to determine what interest, if any, he  
8 has on that, right?

9 THE COURT: His name is on it.

10 MS. LINDAUER: I know, but is that a right of  
11 survivorship, is that an actual right to the account? We don't  
12 have enough information here -

13 THE COURT: His name is on the account.

14 MS. LINDAUER: Right.

15 THE COURT: I mean if you want to put, you know,  
16 estate-planning documents that say it doesn't matter, why is  
17 that - I mean I have no summary judgment other than an account  
18 statement with his name on it.

19 MS. LINDAUER: Right, right. But what are they asking  
20 you to grant them a summary judgment on as it relates to that  
21 issue?

22 THE COURT: Well, you know among other things, that he  
23 didn't list all the bank accounts -

24 MS. LINDAUER: Okay.

25 THE COURT: - on his schedules or -

*Plaintiff's Motion for Summary Judgment*

61

1 MS. LINDAUER: Well, - well, -

2 THE COURT: - for 727 purposes -

3 MS. LINDAUER: Okay, so - okay. So let's go back and  
4 look at his schedules for just a second.

5 THE COURT: Plus he -

6 MS. LINDAUER: Okay, so hang on.

7 THE COURT: It goes to some of their 523.

8 MS. LINDAUER: Well, I don't - well, I don't think  
9 it's a 523 issue.

10 THE COURT: Well, okay, just take on 727.

11 MS. LINDAUER: Okay. 727, so let's go back and look  
12 at the schedules. So that's - that's page 11, starting at 11.

13 THE COURT: She's going to pull them up. I haven't -

14 MS. LINDAUER: Yeah, she's going to pull them up  
15 because it's too hard to flip through the papers.

16 Okay, so go on down. Okay, so go back to the first  
17 part of page 11, Sydney, which will be the beginning of the  
18 schedules. Okay, you're on total claim, so let's go to  
19 Schedules A and B. Okay, so there's his house. Hang on. And  
20 keep going. I think you may be on the summary sheet. Okay,  
21 keep going down. Okay. Okay, run down. Keep going. There you  
22 go. Okay, hang on. Okay.

23 He has - "Do you have other property of any kind not  
24 already listed?"

25 "Debtors is a nonmanager of RIBA Hospitality and a

*Plaintiff's Motion for Summary Judgment*

62

1 signatory on its bank account at Guaranty Bank. Debtor is also  
2 a nonowner signatory of two bank brokerage accounts, garnish,  
3 Goldman Sachs and Bank of America."

4 So, again, not a perfect disclosure, but there is a  
5 disclosure. We were looking at – what we were looking at right  
6 there was the Bank of America account. And he does acknowledge  
7 that he is at least a signatory on the Bank of America account  
8 and the Goldman Sachs account. You heard something about that  
9 as well.

10 So is that an ideal disclosure? Probably not, but it  
11 is a disclosure of his relationship to those two accounts. When  
12 he was asked about it in his deposition, he – he will tell you  
13 more about the fact that he didn't have anything to do – other  
14 than him being listed as a signer, that he didn't have anything  
15 to do with the money moving in and out of those accounts. But  
16 he did disclose his relationship to those – those accounts. And  
17 those are Bank of –

18 THE COURT: Okay. The summary judgment evidence  
19 showing he was the, quote, originator on two and a half million  
20 dollars going out of the Bank of America account –

21 MS. LINDAUER: Okay. So let's – let's look at that  
22 exhibit. I think that's the one that's really dark and hard to  
23 see.

24 THE COURT: It is dark and hard to see.

25 MS. LINDAUER: Let's see, yeah.

*Plaintiff's Motion for Summary Judgment*

63

1 THE COURT: But I eventually -

2 MS. LINDAUER: Let's see, that's Exhibit...

3 THE COURT: I thought I tabbed it.

4 MS. LINDAUER: That may be - is the wire transfer  
5 advice? That's 1115, I believe. See if you can pull it up.  
6 There it is. So what that says is that's just the names on the  
7 account. You've got Ismail Essa Bhai, Rozmeen - Rozmeen Essa  
8 Bhai. Both of their names on there. That's the Bank of America  
9 account that you're referencing. Right?

10 You're saying the originator Ismail Essa Bhai right  
11 there as the originator -

12 THE COURT: Yes.

13 MS. LINDAUER: - on that. And I think he, if you read  
14 his deposition, will tell you that he didn't have anything to do  
15 with that transfer. So, again, you're - we're having to re -

16 THE COURT: The bank got it wrong.

17 MS. LINDAUER: Yeah.

18 THE COURT: The bank got it wrong -

19 MS. LINDAUER: Well, you have to read - you have to  
20 read into that document what was going on. He was asked about  
21 these documents and said that he didn't - and, again, his son,  
22 which counsel acknowledged has said takes full responsibility  
23 for what was going in and out of these accounts. So, again,  
24 that - but - and so I mean - and also I think what becomes  
25 important here is dates, dates of the various transactions that

*Plaintiff's Motion for Summary Judgment*

64

1 were occurring here and – and who was related to those. But,  
2 again, –

3 THE COURT: What do you – what do you mean by that?  
4 The date was 7/18/22.

5 MS. LINDAUER: Okay, so –

6 THE COURT: Right after they signed the –

7 MS. LINDAUER: But it –

8 THE COURT: – the guaranty and the forbearance  
9 agreement, right?

10 MS. LINDAUER: Right. But –

11 THE COURT: We wrote mispaid assets, and here goes  
12 \$2.5 million.

13 MS. LINDAUER: Well, but it went to a Mr. Zhang.  
14 You've seen that name before. So you know where it went. And  
15 apparently Mr. Zhang was someone who was involved in a number of  
16 these transactions –

17 THE COURT: Well, the crypto transaction.

18 MS. LINDAUER: I'm sorry?

19 THE COURT: The crypto transaction.

20 MS. LINDAUER: Yeah, the – yeah, exactly. So – so,  
21 again, I'm just saying to grant a summary judgment based on this  
22 without more, with a deposition saying that 'I didn't know  
23 anything about this and I didn't have anything to do with it,'  
24 to me, there's questions of fact here that require some kind of  
25 a trial.

*Plaintiff's Motion for Summary Judgment*

65

1           We have a trial set in a month. I – I think, based on  
2 the record you have in front of you, that – that you need more  
3 evidence. I – I think what you have here clearly raises  
4 concerns, no question about it, but – but without the testimony  
5 to explain what happened here and with a witness saying, 'I  
6 don't know anything about this transaction,' to assume that he  
7 did without having an opportunity to adjudge his credibility  
8 seems to me to be cutting off – look, if I thought there was a  
9 valid 727 complaint here, you know, I would just have him waive  
10 his discharge. But when I read all of this, I felt like there  
11 were enough questions here that required at least someone to –  
12 you, as the trier of fact, to take a look at this and have an  
13 actual person testify in front of you what was going on here.  
14 And then you could make the decision, yeah, I think he knew  
15 exactly what was going on, or, I think he didn't.

16           And, you know, did – did Ray go to the bank and get  
17 these funds sent in his father's and mother's name to someone.  
18 So – and of course you have Rozmeen's testimony too. So you  
19 have her full transcript also. So you can read her testimony  
20 also regarding a number of these same issues also. But, you  
21 know, at the end of the day, when I look at – I don't think they  
22 can get a 523 complaint, honestly. I don't think they have the  
23 basis for false pretenses, false representations, or actual  
24 fraud.

25           Now I do think the 727 complaints are far more

*Plaintiff's Motion for Summary Judgment*

66

1 serious, but I do think that virtually all of those require you  
2 to find an intent to hinder, delay, or defraud, or some such  
3 language. So if we look at 727(a)(2), it's intent to hinder,  
4 delay, or defraud.

5 If we look at (a)(3), it's conceal, destroy, multi -  
6 manip -

7 THE COURT: No intent. No intent on 723(a)(3) -

8 MS. LINDAUER: Well, but again tell me what recorded  
9 information that he has destroyed, failed to maintain or failed  
10 to provide. I mean you're looking at a lot of recorded  
11 information here, so what - what are they claiming he should  
12 have had -

13 THE COURT: What about the lack of tax returns alone?  
14 Is that a problem -

15 MS. LINDAUER: Well, he's got - he's got legitimate,  
16 two. They've got these other two that are totally bogus. So -

17 THE COURT: Well, he filed bankruptcy April 2023.

18 MS. LINDAUER: Right.

19 THE COURT: We've never gotten '20, '21, and '22.

20 MS. LINDAUER: Well, then the question is did he earn  
21 enough income to have to file tax returns those years. You  
22 know, I mean again, I mean the man had - is living on basically  
23 Social Security right now. So, yeah, -

24 THE COURT: Oh, that's not in his schedules.

25 MS. LINDAUER: Well, in his schedules he said, I

*Plaintiff's Motion for Summary Judgment*

67

1 think, he still had some sort of insurance business, but that's  
2 been shut down. Everybody's acknowledged that -

3 THE COURT: No, he didn't say he had an insurance  
4 business -

5 MS. LINDAUER: What did he have in his - in his  
6 schedules for his income -

7 THE COURT: He says he works as a manager at some  
8 company -

9 MS. LINDAUER: A convenience store.

10 THE COURT: - in Meridian, in Texas - in Meridian,  
11 Texas -

12 MS. LINDAUER: Was - was it a convenience store?

13 THE COURT: - making 3,000 a month, getting 500 a  
14 month from family and friends -

15 MS. LINDAUER: Yeah.

16 THE COURT: He doesn't list any Social Security.

17 MS. LINDAUER: All right.

18 THE COURT: And he doesn't have any records of what  
19 he's really been doing.

20 MS. LINDAUER: Well, -

21 THE COURT: What records do I have? I don't have tax  
22 returns. I mean there's not an intent element of 5- - of  
23 727(a)(3), so I'm a little fixated on that.

24 MS. LINDAUER: But, again, you have to make a  
25 determination, unless such act or failure to act was justified

*Plaintiff's Motion for Summary Judgment*

68

1 under all the circumstances of the case. So, again, you have to  
2 – I think you have to talk to the debtor. I think you have –

3 THE COURT: Is he going to testify if this goes to  
4 trial?

5 MS. LINDAUER: Yeah. He testified during his  
6 deposition. He didn't take the Fifth Amendment.

7 THE COURT: He's not going to take the Fifth?

8 MS. LINDAUER: No, he will testify.

9 THE COURT: Okay.

10 MS. LINDAUER: Now I can't say his son will, but he  
11 will.

12 So the other one, (a) (4), false oaths or accounts, the  
13 debtor knowingly and fraudulently. So, again, you've got a  
14 knowing and fraudulent requirement in that one. And it's  
15 knowingly and fraudulently, okay.

16 And then (5), fail to explain –

17 THE COURT: No – yeah, no –

18 MS. LINDAUER: – loss of –

19 THE COURT: – no intent on (5).

20 MS. LINDAUER: I'm sorry?

21 THE COURT: There is no intent requirement on  
22 727(a)(5) –

23 MS. LINDAUER: (5), right. But he did testify in his  
24 deposition that most of this, he had nothing to do with and  
25 doesn't know about. So, again, I think he did, if you get to

*Plaintiff's Motion for Summary Judgment*

69

1 it, satisfactorily explain. Again, that's a question for you to  
2 decide, is – is listening to his testimony and deciding whether  
3 there is a satisfactory explanation or not.

4 I just don't think these things – look, I think there  
5 are some issues that can be resolved on summary judgment, but  
6 when it comes to intent, fraudulent behavior, I think you have  
7 to judge the credibility of the witnesses.

8 You can read his deposition. He's going to tell you  
9 that he doesn't know about 90 percent of this stuff and had  
10 nothing to do with it. Now you can read it in black and white  
11 and you might not – you might think, okay, he's lying. But I  
12 think you have to give him a chance to actually get in front of  
13 you and explain, and he will. He will come testify. Because,  
14 again, look, if I thought there were valid grounds to waive his  
15 discharge, I would be discussing with him waiving his discharge.

16 When I looked at all of their evidence, while I had  
17 some concerns, I also had explanations. So I felt like he  
18 should have his day in court. You may not, but I feel like he  
19 should. And I think – I don't think that this lends itself to a  
20 summary judgment on a 727 complaint, to be perfectly honest.

21 I mean I've never seen a 727 granted on a summary  
22 judgment. I've seen lots of 523s, where you have a judgment  
23 that says fraud or at least findings of fraud, or something.  
24 But I've never seen a 727 granted on a – not when there are some  
25 intent requirements here. And – and I think you have to make

*Plaintiff's Motion for Summary Judgment*

70

1 some findings as the judge.

2 And so, really, Your Honor, that was really – I mean  
3 you've read this stuff and looked at most of it, I'm sure. I  
4 think there are fact questions here and I think there are  
5 credibility questions here. And I think there is enough  
6 evidence here that a summary judgment would not be appropriate.

7 THE COURT: Okay.

8 MS. LINDAUER: Thank you.

9 THE COURT: Thank you.

10 All right. Mr. Herring, you get the last word.

11 And, just – just to confirm for me, because I did run  
12 out of gas reading the 1500 pages, and I wasn't completely clear  
13 when I stopped preparing, the entire depositions of the debtor  
14 and Rozmeen are in this book?

15 MR. HERRING: And Raheel as well, Your Honor, to – I  
16 mean it's –

17 THE COURT: But Raheel just sat there and took the  
18 Fifth, right –

19 MR. HERRING: It's the Fifth Amendment 300 times, but  
20 it's there.

21 THE COURT: Okay.

22 MR. HERRING: Maybe not exactly 300, –

23 THE COURT: Okay.

24 MR. HERRING: – but probably close.

25 Your Honor, I don't necessarily think it's productive

*Plaintiff's Motion for Summary Judgment*

71

1 to walk through my entire argument. Again, we painstakingly –  
2 THE COURT: I agree.

3 MR. HERRING: – cited to the record all the summary  
4 judgment evidence that supports our findings –

5 THE COURT: Let's just – let me encapsulate Ms.  
6 Lindauer's argument here.

7 MR. HERRING: Sure.

8 THE COURT: And maybe you can encapsulate yours. But  
9 she says there is a lot of smoke there, but for you to find  
10 fire, you're going to have to hear him, him, Ismail testify on  
11 the stand. I mean do I –

12 MR. HERRING: We have – we have identified – no, Your  
13 Honor. We have identified the fire. We have identified the  
14 fire. There has to be a genuine issue of material fact. Simply  
15 saying the debtor denies it, the debtor denies it, the debtor  
16 doesn't know, the debtor doesn't know over and over and over and  
17 over again without presenting any sort of summary judgment level  
18 evidence to the contrary or to create a genuine dispute –

19 THE COURT: And I'm – I'm troubled by that.

20 MR. HERRING: Yeah.

21 THE COURT: I mean Ms. Lindauer makes a very good  
22 point that you never see judges grant a 523 or a 727 at the  
23 summary judgment stage. You almost never do, you know, in a  
24 default context that I have. But, you know, so many of these  
25 have an intent element, okay. Not all of them, not

*Plaintiff's Motion for Summary Judgment*

72

1 727(a)(3)(5). But I usually go to trial on these.

2           But the flipside of what she's saying is I usually see  
3 a response with, you know, 15 attachments saying: Here's where  
4 I refute that the debtor was president or a managing director of  
5 IBF, here is where I refute that this was my tax return, the  
6 second one for 2018, you know, here is my signature. You know I  
7 usually have specific refutation. So weird context for a  
8 summary judgment. I'm not sure her procedure works as far as  
9 just: I adopt the entire response as though it's my sworn  
10 testimony.

11           But I'm also, frankly, annoyed that I got entire  
12 depositions instead of excerpts.

13           MR. HERRING: I un- - I mean I understand that, Your  
14 Honor. And - and I've tried to point to the excerpts for the -  
15 but leave the whole record and so the record is complete -

16           THE COURT: Yes, I see what you did.

17           MR. HERRING: I - I don't want to be accused at any  
18 point of ever, you know, leaving out exculpatory evidence, or  
19 anything like that.

20           THE COURT: I understand.

21           MR. HERRING: I don't think it's there, Your Honor.  
22 And I admit, I mean this is - this is rare. It's asking for a  
23 rare relief, I think, in the 523, 727 context. But here we have  
24 sort of an overwhelming amount, I think, of summary judgment  
25 quality evidence.

*Plaintiff's Motion for Summary Judgment*

73

1           We have a debtor who has not participated on the  
2 merits of this litigation at all up to this point. Ms. Lindauer  
3 mentioned that he's never been before the Court. There have  
4 been ample opportunities, including I think -

5           THE COURT: She said he's going to testify, -

6           MR. HERRING: Well, -

7           THE COURT: - if we set it for trial.

8           MR. HERRING: - he might. He might. He might. I  
9 mean I have sat through his deposition, including the first one  
10 that he -

11          THE COURT: All right.

12          MR. HERRING: - terminated early because he was  
13 allegedly sick. Both - both transcripts are in the record. I  
14 don't think we need to judge his credibility in person in order  
15 to - to look at the record, see the inconsistencies, see the  
16 omissions, see things that simply saying, 'I don't know, I don't  
17 know, I don't know' with no further explanation, you know,  
18 creates a genuine dispute.

19          THE COURT: Um-hum.

20          MR. HERRING: I just don't think it's necessary here.  
21 I think it would be sort of futile, frankly.

22          Some of the things that Ms. Lindauer points out,  
23 failure to maintain records. I mean, yes, we have records. We  
24 have records that we had to obtain through third-party discovery  
25 because the debtor didn't maintain them. That speaks volumes.

*Plaintiff's Motion for Summary Judgment*

74

1           The faults are myriad. We have walked through them.  
2 Failure to explain loss of assets. Again, not an intent issue.  
3 And some – you know, among other things, we have the debtor's  
4 claim to Goldman Sachs, which he doesn't deny. And I think when  
5 you look at the pin cite for that, you will see he doesn't deny  
6 that he signed a representation to Goldman Sachs that the family  
7 collectively had a certain amount of assets and a certain amount  
8 of income. You know, there's no – there's no refutation of  
9 that. There is no refutation of the fact that he had –

10           THE COURT: I remember reading that.

11           MR. HERRING: Yes.

12           THE COURT: The summary judgment evidence of that, can  
13 you pinpoint it to me? Some piece of paper where he represented  
14 to Goldman Sachs, –

15           MR. HERRING: I can, Your Honor.

16           THE COURT: – 'I have x amount of' –

17           MR. HERRING: Give me to find it in my outline, but I  
18 can, Your Honor. This is where I wish I had a word search built  
19 into my brain.

20           Ah, that's at Appendix 1174.

21           THE COURT: Okay. So quiet profile and investment  
22 objectives; estimated annual income, 6.2 million; total assets,  
23 50 million. Net investable assets, 92 million. Okay. So this  
24 shows Ismail first as account holder. Raheel and Rozmeen. It  
25 looks like Ismail and Raheel signed it.

*Plaintiff's Motion for Summary Judgment*

75

1           I don't have a date on this. Should I see the date  
2 somewhere and I don't?

3           MR. HERRING: I'm not sure that this was dated, Your  
4 Honor.

5           THE COURT: Okay. All right.

6           MR. HERRING: I don't – I can tell you that I don't  
7 think we have any reason to believe that it wasn't before the  
8 loan was made, after the fraud of it was.

9           THE COURT: Okay.

10          MR. HERRING: Most of the Goldman Sachs records were  
11 from some period of time before the loan was made.

12          That being said, I want to address something Ms.  
13 Lindauer briefly said about bank statements. Yes, there are  
14 bank statements here that predate one year before – this is with  
15 respect to transfers – one year before the petition date. But  
16 all of the transfers we have complained of were within a year.  
17 And I think I have given the cites for that. It's the June –  
18 essentially, the April, June, and July – I guess April, May,  
19 June, and July statements for the family Bank of America  
20 account.

21          THE COURT: Um-hum.

22          MR. HERRING: Which, again, going back to that, we  
23 have an account with the debtor's name on it. We have millions  
24 of dollars coming in and leaving. Nothing more than, 'I don't  
25 know about it' to address the debtor owns this account and is

*The Ruling of the Court*

76

1 alleged to have known this account. No evidence of this idea  
2 that he was a convenience owner, whatever that means, or  
3 nonowner, I think is what the amended schedules say. Schedules  
4 that were amended only, I believe, after the 341 meeting when we  
5 asked about some of these things.

6 I'm not sure that the judgment issue, Ms. Lindauer  
7 made an issue out of the judgment and they're not being specific  
8 findings, we've never argued collateral estoppel -

9 THE COURT: Right.

10 MR. HERRING: - for that reason. It was a default  
11 judgment and it wasn't even appropriate.

12 THE COURT: Um-hum.

13 MR. HERRING: And that's really - that's really it,  
14 Your Honor. We have nothing to - we have nothing that rises to  
15 the level of creating a genuine dispute of fact as to all of  
16 these sort of - sort of precisely-cited things in the record  
17 that support our - our arguments.

18 THE COURT: Okay. Thank you.

THE RULING OF THE COURT

20 THE COURT: All right. Well, we have all kind of  
21 alluded to this being, well, I don't know, it's just not your  
22 ordinary situation and, in different ways, it's not your  
23 ordinary situation.

24 I think of everything that I find unusual, the most  
25 unusual part of this is - well, I'm stating what surely is on

*The Ruling of the Court*

77

1 all of our minds: We have a son of a debtor who has bled – who  
2 has pled guilty to wire fraud. That's the federal crime, right?  
3 Wire fraud. He is, I guess, going to be sentenced some time  
4 soon. So I guess he said, you know: Mea culpa, I did it.

5 And now we have a father in bankruptcy who is, I guess  
6 his defense is he's pointing the finger at his son: Look, my  
7 son pled guilty; and, look, he did it all; I don't know  
8 anything.

9 I'm tempted to be a little bit flippant. My husband s  
10 a retired cop and I've learned a lot of cop lingo over the  
11 years. And he's talked about the Shaggy defense. You know what  
12 I mean about the Shaggy defense? It comes from some pop story  
13 who his famous defense was: It wasn't me, it wasn't me, it  
14 wasn't me. That was R. Kelly actually. And he – I can't  
15 believe I'm talking about this. But, anyway, this is sort of  
16 like the Shaggy defense to a 727, 523: It wasn't me, it was my  
17 son. And it's just – it's – I've never seen anything like it.

18 You know, it appears we have a close-knit family.  
19 They live in the same house, they travel together, they worship  
20 together. They are allegedly in a lot of businesses together.  
21 But, okay, this is: It's my son's fault, it's not me.

22 So I'm very – I'm very torn today. I will tell you I  
23 came in here today, and I'm not going to tell you which two  
24 counts it was. I came in here today thinking based on this huge  
25 notebook, I may have to grant summary judgment on a couple of

*The Ruling of the Court*

78

1 these counts. And then I thought, ah, I'll probably have to go  
2 to trial on everything else. You can figure out what I'm  
3 talking about, 727(a)(3) and (a)(5). They don't have a  
4 fraudulent intent requirement. And I wasn't sure I had refuting  
5 summary judgment evidence from the debtor to counteract these  
6 huge notebooks of Benefit Street. But now I'm hearing, oh, if  
7 you had sifted through those deposition transcripts carefully,  
8 you would have seen he denied this, that, and the other.

9 So given that we are set for trial the week of July  
10 15th, I think it makes more sense, and the District Court, the  
11 Fifth Circuit would think I exercised proper discretion if I  
12 went ahead and set this for trial, the whole darn thing, and  
13 since it is so close, I think that is what makes sense.

14 I think there's a mountain of evidence here that  
15 Benefit Street – you know, I don't know if they have more than  
16 what's in the notebook, but if it's just what's in the notebook  
17 that's a lot of evidence. And the debtor can explain it. And so  
18 his explanations will either be credible or they won't. And so  
19 that's what's I'm going to do. I'm going to deny the motion for  
20 summary judgment and say this is going into trial in July.

21 Do not ask me for a continuance because if you do, I  
22 may drill back down on the – I just – I'm erring on the side of  
23 denying this motion because I think we're going to go trial in  
24 July and it would take me a month to write up my ruling on the  
25 motion for summary judgment anyway. So we'll just hear the

*The Ruling of the Court*

79

1 evidence. Strange, strange, strange.

2 I don't know why Ismail Bhai wants to get on the stand  
3 and testify in his own defense in a way that's going to maybe  
4 harm his son and, for all I know, Rozmeen. But the clients make  
5 these decisions for reasons that I don't always understand.

6 So I want you all to get together and talk about  
7 stipulated evidence. I don't want to spend time bogged down in  
8 a multi-day trial over objections to exhibits and da-da-da-da,  
9 if you just agree. I mean a lot of this stuff, the loan  
10 agreement, the promissory notes, many other things in here, I  
11 would think you could stipulate to so we wouldn't have to waste  
12 time with that. I'm thinking we're only going to have the  
13 debtor as a witness? Maybe someone from Benefit Street. I  
14 doubt we're going to have 20 witnesses, right?

15 How many days do we think this would take?

16 MS. LINDAUER: I just was asking that. I can't  
17 imagine more than two. And I'm not sure we even have two. I  
18 mean if we stipulate to a lot of the exhibits, it's basically  
19 the debtor, maybe his wife. Ray would probably take the Fifth,  
20 so there's probably no reason to call him if they want to call  
21 him. I don't even know if they need anybody from Benefit here.  
22 That's up to them. But I'm thinking two days. And, you know,  
23 maybe not even that much.

24 THE COURT: Mr. Herring.

25 MR. HERRING: It's likely two to three, I mean it

*The Ruling of the Court*

80

1 depends on what we're able to stipulate to, of course.

2 THE COURT: Okay.

3 MR. HERRING: Three, on the outer edge, I think.

4 THE COURT: All right. Well, if you all could talk to  
5 Traci, my Courtroom Deputy, I don't see her on the line right  
6 now, but I don't know - well, let me see if she's by her phone  
7 and answers, so we could like nail down the 15th.

8 MS. LINDAUER: Sure.

9 THE COURT: I know we were possibly going to have, I  
10 think, a jury trial that week, but now they have actually  
11 reconsidered.

12 She's not answering. So if y'all could just follow up  
13 with her by email and confirm that we can do the 15th and 16th.  
14 You know, we'll just go ahead and block those.

15 And then I guess we'll go ahead - you probably have a  
16 scheduling order that shows trial docket call, what, seven days  
17 before that?

18 MS. LINDAUER: Yeah, it shows it on July 8th at 1:30.

19 THE COURT: Okay. So we'll go ahead and keep that set  
20 in case y'all have pretrial matters that we need to go over, but  
21 we could - we could probably do that by video unless you think  
22 we need to all be here in the courtroom. You know, hopefully we  
23 won't have pretrial housekeeping matters, too many of them. But  
24 if we do, we can address them on that day.

25 All right. Well, I'll see you next month, not sooner.

*The Ruling of the Court*

81

1 MS. LINDAUER: Thank you, Judge.

2 COURT SECURITY OFFICER: All rise.

3 (The hearing was adjourned at 4:28 o'clock p.m.)

4 -000-

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

State of California )  
                            )  
County of Stanislaus   )

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of Texas, Office of the Clerk, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

I am a Certified Electronic Reporter and Transcriber by the American Association of Electronic Reporters and Transcribers, Certificate Nos. CER-124 and CET-124. Palmer Reporting Services is approved by the Administrative Office of the United States Courts to officially prepare transcripts for the U.S. District and Bankruptcy Courts.



Susan Palmer  
Palmer Reporting Services  
2129 Golden West Lane  
Modesto, California 95350  
(209) 915-3065

Dated December 11, 2024